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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

~~No. 329.~~ 53

LE SASSIER AND BINDER, PLAINTIFFS IN ERROR,

vs.

SAMUEL H. KENNEDY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED SEPTEMBER 29, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

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1 *Petition. Filed June 11th*, 1869.

STATE OF LOUISIANA:

Fifth District Court for the Parish of Orleans.

LESSASSIER & BINDER
vs.
SAM'L H. KENNEDY & E. C. FEINOUR. } No. 9999.

To the honorable the judge of the fifth district court in and for the parish of Orleans:

The petition of Lessassier & Binder, a commercial firm domiciliated and carrying on a mercantile business in the city of New Orleans and composed of Henry L. Lessassier, George Binder, and George Lessassier, respectfully shows—

That Samuel H. Kennedy and E. C. Feinour are justly and truly indebted *in solido* unto your petitioners in the full sum of
2 three thousand five hundred and seventy-nine $\frac{60}{100}$ dollars for this, to wit:

That on the 24th day of February, 1873, petitioners, Lessassier & Binder, sold to Samuel H. Kennedy, through E. C. Feinour, broker, forty (40) shares of the capital stock of the Crescent City National Bank, then organized as a banking association and body corporate under the laws of the United States and carrying on the banking business in the city of New Orleans; that sale was effected by E. C. Feinour, the broker of said Samuel H. Kennedy, and the price of said sale was paid by said Kennedy, as required by said contract.

Petitioners further show that when sales of stock are made through brokers it was the usage in the city of New Orleans, at the date of the transaction referred to herein, for the seller to sign the transfer of the shares sold upon the transfer book, the name of transferee being left blank, and subject to the order of the broker effect-
3 ing the sale, whose name, under a custom of the mercantile community in such transactions, is written on the margin in pencil, and therefore it was and is the usage to insert in said blank the name of the buyer as transferee; that in accordance with this usage and at the instance of the said purchaser, on the 24th of February, 1873, upon the payment of the price of the sale of said shares aforesaid, these petitioners transferred the said shares sold by them by signing the transfer book, leaving the name of the transferee to be filled up, as, under his said contract and the usage of trade, it was his duty to have done.

Petitioners further show that instead of filling in his own name as purchaser of said stock on the transfer book of said bank aforesaid the said Samuel H. Kennedy left the transfer in the condition in which your petitioners signed it—that is, the name of the transferee being left in blank in the body of the transfer and on
4 the margin of the transfer book, there was, in pencil, the names of the said Samuel H. Kennedy and that of his broker, placed there by the said Kennedy or by his broker under the direction of the said Samuel H. Kennedy; and the said transfer, as peti-

tioners signed it with the said pencil memorandum in the margin, is shown by a copy thereof hereunto annexed as part hereof and marked Exhibit "A."

Petitioners further show that the said Crescent City National Bank failed and suspended payment on the 14th of March, 1873, and passed into liquidation under a receiver appointed by the Comptroller of Currency; that after the failure of the said Crescent City National Bank the said Samuel H. Kennedy caused the name of Morris Dyer to be inserted in the blank on the transfer book aforesaid as the transferee of said stock; that under the national banking law
5 *that* no transfer of stock made at or after the failure of this said bank is effective to change the liability of the actual shareholder at the time of the failure or for any other purpose and the liability of the shareholders who are sued at the time of said failure by such transfer.

And petitioners further show that the said Morris Dyer was and is wholly irresponsible, and the insertion of his name as transferee after the failure of the said Crescent City National Bank and under the circumstances of the transaction was merely an attempt on the part of the actual and real shareholder to escape liability.

Petitioners further show that from the date when the said sale of stock was made to said Samuel H. Kennedy, to wit, the 24th of February, 1873, he became liable and subject to all the responsibility of a shareholder in the said Crescent City National Bank, and especially on the failure of the said bank he became liable
6 for the contracts, debts, and engagements of the said bank, the enforcement and extent of said liability being determinable under the laws of the United States by the Comptroller of the Currency, and to be enforced when so determined by the receiver of the said bank; that subsequent to the appointment of said receiver the Comptroller of Currency did ascertain that the assets and credits of the said Crescent City National Bank were insufficient to pay its debts and liabilities; that recourse to the individual liability of the shareholders was necessary to pay such debts and liabilities, and that it was requisite to collect from said shareholders the full amount of seventy per cent. (70 %) of the par value of the shares owned by them.

Petitioners further show that thereupon suit was brought against your petitioners for the said seventy per cent. (70 %) of the par value of the said (40) forty shares of stock sold by them to
7 said Kennedy; and of which he failed to have his name inserted in the transfer book as transferee, as hereinbefore set forth; that in said suit it was adjudged that your petitioners were liable for the full amount of the said seventy per cent. (70 %) of the par value of said shares of stock, because of the failure of the said Samuel H. Kennedy to insert his name in the transfer book aforesaid as transferee, and of the facts hereinbefore stated.

Petitioners further show that the amount paid by them under the judgment rendered against them as aforesaid, and which said judgment was paid and satisfied by your petitioners, with interest and costs, is the sum of three thousand five hundred and seventy-nine $\frac{60}{100}$

dollars, all of which more fully appears by the petition and judgment thereon in the suit of Frank F. Case, receiver of the Crescent City National Bank *vs.* Lessassier & Binder, No. 8616 of the docket of the United States circuit court for the fifth circuit and dis-
8 trict of Louisiana, and of the receipt of the money paid on said judgment in satisfaction thereof, copies whereof are herewith filed as part hereof and marked, respectively, Exhibits B, C, D.

Petitioners show further that the said Samuel H. Kennedy was justly and legally liable for said amount which your petitioners have been compelled as aforesaid to pay; that the obligation to make said payment was incumbent upon the owner of said stock, and was imposed and binding in law upon the said Samuel H. Kennedy as the actual owner of the said stock at the time of the failure of the said Crescent City National Bank, and when said call on the shareholders was determined upon by the Comptroller of Currency that the payment made by your petitioners, the vendors of the said Samuel H. Kennedy, under the facts and the law is to be deemed to be the payment of the debt of the said Kennedy, which, by his acts and conduct, he compelled your petitioners to pay for him, and for which he is liable; that your
9 petitioners have been compelled to pay said money, owing to the conduct of the said Kennedy in not causing his name to be inserted in the transfer book aforesaid as transferee of said stock and preserving in said transfer book of said bank, contrary to his obligation and duty, the said transfer in blank, with your petitioners' name-signed thereto, from the time of said sale to him until said Crescent City National Bank failed, and owing to the other acts of the said Samuel H. Kennedy in the premises, by which he has subjected your petitioners to a liability which was his own and which he should have met; that his said conduct and acts were violative of his obligations in the premises and your petitioners' rights; were unlawful, illegal, and have caused unto your petitioners loss and damage to the extent of three thousand five hundred and seventy-nine $\frac{60}{100}$ ($3,579.60) doll's, said amount paid by them, and
10 their counsel's fees in the said suit of Frank F. Case, receiver, *vs.* Lessassier & Binder, No. — of the circuit court of the United States as aforesaid, for all of which he is liable unto your petitioners.

Petitioners further show that when said suit aforesaid was brought against your petitioners they notified the said Samuel H. Kennedy of its institution, and that they would hold him responsible for whatever amount they might be compelled to pay by judgment in said suit; that this notification was given to him to enable the said Samuel H. Kennedy to defend said suit if he saw proper to do so; but the said Kennedy failed to appear and defend said suit.

Petitioners further show that E. C. Feinour was the broker who negotiated the sale of the said forty (40) shares of stock hereinbefore described, and that said E. C. Feinour acted therein as the broker for and on behalf of the said Samuel H. Kennedy; that it
11 was, at the date of the transaction referred to herein and is now, the known usage of trade and the generally observed

custom, in the negotiation of such business, for the broker effecting such sale to see that the name of his principal, the vendee, is properly filled in as transferree in the blank transfer in the transfer book as aforesaid.

And petitioners further show that the filling up of the blank left open for the insertion of the name of the actual transferree is by custom and usage subject to the order of the broker negotiating the sale, whose duty it is, by the custom and usage as aforesaid, to insert in said blank the name of the buyer as transferree.

Petitioners show that the said E. C. Feinour neglected to see and require that the name of the said Samuel H. Kennedy, his principal, was inserted in the blank transfer on the transfer book as aforesaid as transferree, though it was his duty so to have done, by the custom and usage of trade, as aforesaid.

12 Petitioners further show that in consequence of the said neglect of said E. C. Feinour they were compelled to pay three thousand five hundred and seventy-nine $\frac{60}{100}$ ($3,579.60) dollars by judgment of the United States circuit court in said case No. 8616, hereinbefore referred to.

Wherefore your petitioners pray that the said Samuel H. Kennedy and E. C. Feinour be cited to appear and answer this petition, and that after due proceedings they be condemned *in solido* to pay unto your petitioners the sum of three thousand five hundred and seventy-nine $\frac{60}{100}$ dollars, with interest, and costs herein claimed, and for all general and equitable relief.

(Signed) HENRY C. MILLER,
FRANK K. MILLER,
Att'ys for Petitioners.

Answer. Filed 21 *November*, 1879.

13 Fifth District Court.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

Now into court comes Samuel H. Kennedy, one of the defendants above named, and for his separate answer denies all and singular the allegations contained in the plaintiffs' petition, except as may be hereinafter admitted.

Respondent admits that on the 24th day of February, 1873, he agreed with E. C. Feinour to purchase 40 shares of the stock of said bank, and paid the said Feinour therefor the sum of —— dollars, but that on the 15th of March, 1873, respondent sold his right, title, & interest in said stock for the price of ($440.00) four hundred and forty dollars, which price respondent received in cash from T. A. Adams, the purchaser; that said sale and delivery was made by respondent and consummated in good faith; that at no time was your respondent a shareholder on the books of said bank, nor liable as such under the law or the facts to the plaintiffs at any time nor in any manner.

14 That on the — of ——, 1873, suit No. 7261 was brought in the circuit court of the United States for the fifth circuit, district of Louisiana, by Frank F. Case, receiver of said bank, against Henry Abraham & *al.* and this defendant to compel respondent to contribute as a shareholder of said stock 70 % thereof, and that final judgment was rendered in said suit in favor of your respondent on — day of ——, declaring and deciding that he was not a stockholder nor liable as such; and your respondent annexes a copy of said record & judgment in said suit No. 7261 as a part of this answer, and pleads the same in bar of the plaintiffs' demand herein.

Wherefore respondent prays to be hence dismissed with his costs.

(Signed) J. McCONNELL,
For Respondent.

Answer in Suit No. 7261, *United States Circuit Court, Annexed to Answer of S. H. Kennedy. Filed Nov.*, 1879.

15 Fifth District Court.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

United States Circuit Court.

FRANK F. CASE, Receiver of the Crescent City Nat'l Bank,
vs.
HENRY ABRAHAM & *al.* } No. 7261.

The answer of Samuel H. Kennedy, *and* of the defendants in the above-entitled cause, to the bill of complaint filed by Frank F Case, receiver of the Crescent City National Bank of New Orleans.

This defendant, now and at all times hereafter, saving and reserving to himself the benefit and advantage of any and all exceptions which can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, does now answer and says:

16 This defendant admits that the said Crescent City Bank was a State bank and was changed subsequently into a national bank, as is alleged in the bill of complaint, and believes it — be true that on or about the 17th of March, 1873, as stated in the bill, the said bank was protested for failure to pay its notes and was directed to be put in liquidation and the said complainant appointed receiver thereof.

Defendant charges that the available assets of said bank at the date of the appointment of complainant as receiver exceeded a million of dollars.

Defendant denies that the assets of said bank were, or are at this time, insufficient to pay its debts.

Respondent avers that since the appointment of said complainant as receiver fifty per cent. of the debts of the said bank have been paid to the creditor thereof; that there are assets of great value belonging to said bank and debts due by solvent debtors,
17 which still remain unrealized and uncollected by said receiver, which can be made available by said receiver; that the insufficiency in the assets of said bank to pay its debts, if such exist, which is not admitted, but denied, is very much less than the amount sought to be recovered from the shareholders by said receiver; that for any such deficiency, should the same exist, the shareholders of said bank are only liable rateably and equally, and not one for the other, under the terms of the act of Congress in accordance with which the said bank was created, and the shareholders became liable as such, and no shareholder can be held liable for more than his proportionate share, considering the whole amount of the insufficiency and the entire number of shares of stock.

Defendant denies that the amount of deficiency in assetts justifies or authorizes the demand now made by said receiver, as set forth in said bill of complaint.

And respondent denies that it will appear from an exami-
18 nation of the assetts of said bank, due regard being had to the ability of the debtors, that any necessity exists for calling for the sums demanded in the bill of complaint from the shareholders of said bank, and avers that the assetts of said bank have not been exhausted, and should be first exhausted before resort can legally be had against the stockholders, and then only for the balance that may then be thus shown to be due and remain unsatisfied.

This defendant has no knowledge whether the Comptroller of the Currency has determined, as stated in said bill of complaint, and your respondent's belief is if such determination was made, as alleged, the same was made in error and does not conclude this respondent.

Respondent denies that he is the holder and owner of forty shares of the stock of said Crescent City National Bank, as is alleged in said bill of complaint.

Further answering, respondent avers the truth to be as follows, and as fully set forth in his answer, to the interrogatories an-
19 nexed hereto, to which reference is made; that on the 24 February, 1873, respondent purchased forty shares of the capital stock of the said Crescent City National Bank from a broker, E. C. Feinour, but never received a certificate therefor or transfer thereof by certificate on or for said bank; that on the 15th day of March, 1873, respondent sold the said stock to Thomas A. Adams for the price of eleven dollars per share, the said Adams then paying your petitioner four hundred and forty dollars for said stock; that the truth of these allegations will more fully appear from the said answers to interrogatories annexed hereto as part hereof as aforesaid.

And this defendant denies all manner of unlawful combination and confederacy wherewith he is by the said bill of complaint charged, without this, that there is any other matter, cause, or thing

in the said complainants' said bill of complaint contained material or necessary for this respondent to make answer unto and not herein, and hereby well and sufficiently answered, confessed, traversed,
20 avoided, or denied, is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver, maintain, or prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) SAM'L H. KENNEDY.
(Signed) J. McCONNELL,
Solicitor- for Defendant-.

Answers of Samuel H. Kennedy to the Interrogatories Propounded to Him in the above-entitled cause.

First interrogatory he answers: I purchased, on the 24th February, 1873, of or through E. C. Feinour, a broker, forty shares of the stock of the said Crescent City National Bank, par value one hundred dollars each, for which I paid fifty dollars per share and a brokerage of one quarter of one per cent. I sold said shares to Thomas A. Adams on the fifteenth day of March, 1873. The
21 shares I purchased were never converted into stock to me or for me, but were transferred by Lessassier & Binder, as as appears from the transfer books of said bank, in ink, to Morris Dyer, and by pencil memorandum in margin to E. C. Feinour, S. H. Kennedy, and Morris Dyer, successively. Mr. Adams, who purchased from me, requested that the transfer be made to Morris Dyer.

Second interrogatory he answers: I never purchased or sold any stock in the Crescent City National Bank other than the forty shares referred to in answer to interrogatory first, and I do not now own any of said stock, nor did I own any of said shares when the said bank suspended or when the bank was placed in the hands of a receiver.

Third interrogatory he answers: Deponent refers to his answer to interrogatory first for his answer in part to this interrogatory, and further states that Thomas A. Adams is a white man, and
22 paid for the said shares eleven dollars each in his check for four hundred and forty dollars, which check was deposited by this deponent the same day, to wit, March 15, 1873, to deponent's credit in the State National Bank. There was no other consideration for said sale.

Fourth interrogatory he answer: No; I did not. I had no idea that the Crescent City National Bank was or would be insolvent. I learned that its affairs in London were not resulting as favorably as was at first supposed, and its stock was, therefore, less valuable. I purchased the forty shares thinking the first depression put it down too low, and that it would rally, and I could sell it out at a profit. I was offered forty-nine dollars a share and refused to sell. Later I was offered forty dollars; then $20, and again $16, but refused to sell, but becoming, as it were, disgusted with my in-

vestment, I determined to sell at the best price I could get, and sold the shares, as already stated, at eleven dollars each, to Mr. Adams.

23 (Signed) SAM'L H. KENNEDY.

Sworn to & subscribed before me this 27th April, 1875.

(Signed) F. B. VINOT,
Com'r U. S. Circuit Court, Dist. of La.

Answer of E. C. Feinour. Filed 17th December, 1879.

Fifth District Court.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

Now comes the defendant, E. C. Feinour, into court and, for answer to plaintiffs' complaint set forth in his petition, denies all and singular the allegations therein contained, except as hereinafter admitted.

He admits that he acted as broker for S. H. Kennedy and purchased the said stock for him, and that whatever he did in the premises was in his capacity as broker, and that it was done in accordance with the customs and usages prevailing amongst brokers in the city of New Orleans at the time of the purchase of the said stock.

24 Therefore he prays to be hence dismissed with his costs, and he prays for general and equitable relief.

(Signed) D. S. BRYON,
Of Counsel for Def'd'ts.

Answer (Supplemental) of E. C. Feinour. Filed January 7th, 1880.

Fifth District Court.

LESSASSIER & BINDER
v.
S. H. KENNEDY & *al.* } No. 9999.

Now comes E. C. Feinour, one of the defendants in the above-entitled suit, and leave being first obtained, files this his supplemental answer to plaintiffs' complaint.

He reaffirms all that he has set forth in his original answer, and further saith that the plaintiffs cannot maintain their action against him by reason that the same is prescribed, and he pleads the prescription of one, two, three, and five years.

25 And further he prays, in case judgment shall be rendered against him in favor of plaintiffs, that a like judgment may be rendered by the court in his favor over against Samuel H. Kennedy, his codefendant, and he prays for all general and equitable relief.

(Signed) D. S. BRYON, *Att'y.*

Order to File Supplemental Answer.

Let this supplemental answer be filed.
New Orleans, 7th January, 1880.
(Signed) W. H. ROGERS, *Judge.*

Order and Continuance.

Minutes 19th December, 1879.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case is continued indefinitely.

26 *Motion for a Subpœna Duces Tecum. Filed March 18th*, 1870.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

On motion of Henry C. Miller and F. K. Miller, att'ys for plaintiffs, it is ordered that Frank F. Case, receiver of the Crescent City Bank, do produce in court, on Thursday morning, the 18th March, 1880, on the trial of this cause, the transfer book of shares of the stock of said bank, exhibiting the transfers of said stock from 1st February, 1873, to the date the bank passed into the hands of the receiver.

Order & Continuance.

Minutes 18th March, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case is continued by preference.

Order Renewing Sub. Duces Tecum.

Minutes 31st M'ch, 1880.

27 LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

On motion of Henry C. Miller and Frank K. Miller, of counsel for pl'ffs, it was ordered that the *subpœna duces tecum* herein issued to Frank F. Case, receiver, be reissued and made returnable on Thursday, the 1st April, 1880, at 12 o'clock m., on the trial of this cause.

Order & Continuance.

Minutes 1st April, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case is continued by preference.

Order & Continuance.

Minutes 15th April, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case is continued by preference.

28 *Order & Continuance.*

Minutes 29th April, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case is continued by preference.

Note of Evidence. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

See page No. 53.

Testimony. Filed May 13th, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

SAMUEL H. KENNEDY sworn.

Direct examination by Mr. BRYON, counsel for Mr. Feinour:

Q. Mr. Kennedy, did Mr. Feinour act in the capacity of broker for you in the purchase of those forty shares of stock?

29 A. Well, I cannot say that he did. I find that I bought forty shares of *of* stock from him and gave a check to his order.

HENRY A. LESSASSIER sworn.

Direct examination by Mr. MILLER:

Q. Mr. Lessassier, you are a member of the firm of Lessassier & Binder?

A. Yes, sir.

Q. The plaintiffs in this case?

A. Yes, sir.

Q. Your firm was engaged in business here in the year 1873 and prior thereto, I believe?

A. Yes, sir.

Q. Mr. Lessassier, did your firm have any transactions with the defendants, S. H. Kennedy and E. C. Feinour, in February, 1873, with reference to any shares of the Crescent City National Bank stock?

NOTE.—Mr. McConnell reserves the same objection to this testimony of this witness, and any others that may be introduced, on the same grounds already stated to the documentary evi-
30 dence, and it is agreed that this objection may be applied to all further testimony.

Q. Please state what the transaction was.

A. We had no transaction with Mr. Kennedy particularly; we sold to Mr. Kennedy, through his broker, some Crescent City Bank stock, which we transferred to the broker in the usual way.

Q. How many shares?

A. I think it was forty. Mr. Feinour was the broker; we sold him the stock in the regular way customary amongst brokers, and transferred it in the usual way, and he paid us for it.

Q. What was the date of the transfer, do you remember?

A. I do not know, sir; I have not refreshed my memory about it; it is a long time ago. We have got the records at our office.

NOTE.—Mr. McConnell, in addition to the objections already heretofore made *the* the documentary evidence itself, now objects on the ground that it is incompetent to prove the transfer of stock in said bank, being a national bank doing business under the
31 national banking law, in any other way or manner than as provided by said law for the transfer of stock, which must be upon the transfer book in writing, in the body of the transfer book, and not upon the margin, either in pencil or otherwise, and it is agreed that this objection will apply to all testimony of a similar character; and further objects on the ground that the witness contradicts the transfer book.

By Mr. MILLER:

Q. Mr. Lessassier, let me direct your attention now to the transfer book of the Crescent City Bank in view of refreshing your memory, and, with that book before you, ask you whether you can state the date of transfer to Mr. Kennedy, the number of shares transferred, and the other particulars connected with it?

A. Well, it was on the 24th of February, 1873; 40 shares. The transfer is dated here 24th February, 1873; forty shares.

Q. Were those the shares you transferred to him?

32 A. I guess so, sir. I did not come down here prepared to answer these questions. They are on my books. I can give you the original record and the checks. I don't know what this is that I have before me. This blank may have been filled up six months afterwards, for all I know, but my books will show. I have the original checks.

THOS. S. BARTON sworn.

Direct examination by Mr. MILLER:

Q. Mr. Barton, you are — broker in New Orleans?
A. I am, sir.
Q. Were you a broker in the year 1873?
A. I was, sir.
Q. Mr. Barton, do you recall the date when the Crescent City Bank failed?
A. I do not, sir.
Q. Can you recall it by fixing your mind upon it?
A. I can by reference to my books, sir.
Q. Well, Mr. Barton, you recollect it did fail, of course?
A. I remember that perfectly well.
Q. Mr. Barton, was it your habit to deal in shares of the Crescent City National Bank stock?
33 A. Yes, sir.
Q. What is the effect upon the market in reference to the sales of stock when a national bank fails?
A. When a bank fails some persons suppose the bank worth something & will pay a price for it; if it is supposed it is not worth anything they sell their stock.
Q. Do you remember the impression that prevailed in this community after the failure of this bank?
A. It was sold for between forty and fifty dollars after the announcement of the failure of the bank.
Q. What is the usual effect upon the sales of stock caused by a failure of a bank?
A. Well, it still remains a subject of commerce when a bank suspends. When the first announcement is made of the suspension of a bank some persons think that the stock is worth "so much;" others think it is worth less. As such an instance of the Citizens' Bank, when it suspended a few years ago, the stock sold for thirty or thirty-five dollars after the bank's suspension, parties
34 thinking that they could be able to recover that much out of the assets of the bank.
Q. It depends very much upon the estimation in which the bank is held in the community?
A. Yes, sir.
Q. And if it is supposed to be a bad failure, when the bank first suspends, what is the effect?
A. If it is supposed to be worthless when the bank first suspends parties investigate the assets as published in the bank, and they make up their minds as to the value of that stock maybe—as to whether they will buy it or sell it.
Q. Do you remember an instance in which the shares of a national bank ever had any value after the failure of the bank?
A. Yes, sir; I did in this other bank.
Q. The Citizens'?
A. No, sir; the Crescent City National Bank.

Q. Do you mean to say that ultimately these shares had any value?

A. Not ultimately, but at the time of the first suspension
35 they had; ultimately it was understood that the shares were worth nothing—within probably a few weeks.

Q. Do you know whether that impression prevailed directly after or some time after?

A. Well, probably in the course of ten days, two weeks, or three weeks after Lizardi's failure, who was understood to be connected with the bank.

Q. And his failure was considered to be what?

A. Very disastrous.

SAMUEL H. KENNEDY.

Direct examination continued by Mr. BRYON:

Q. Mr. Kennedy, from whom did you understand these shares came?

A. I had no knowledge, sir, at all.

Q. You knew Mr. Feinour was the broker, did you not?

A. Well, I suppose he was, but not my broker, you understand. Brokers sometimes borrow on their own account. I bought it from him and gave a check to his own order.

Q. Did you not pay him a brokerage?

36 A. No, sir; I gave him a check for even two thousand ($20,000) for forty shares.

Q. Can you be absolutely certain that you did not pay him brokerage?

A. I think so, because I have the check in my pocket that I paid him. Here it is, if you would like to look at it. (Witness produces check.)

Q. At what rate would this be?

A. Fifty dollars ($50) a share for forty shares.

Q. What would have been the brokerage on that transaction?

A. Well, I think the brokerage, as charged by brokers, is either 25 cts. or 50 cts. Mr. Feinour knows what that is. If I had paid any brokerage I would have included the brokerage in the check. It is often a party gives limit to buy stock at a certain price, and they go out and make the purchase.

Q. Mr. Kennedy, did you ever see the transfer of the stock on the books of the bank?

A. I did; yes, sir.

Q. Well, who did you find the stock had been transferred to?

37 A. I found that E. C. Feinour, in pencil, had transferred it to S. H. Kennedy.

Q. I have reference to the transfer of Lessassier & Binder.

A. I do not think I saw that at the time. I will tell you when I think I saw it—when I transferred it to Morris Dyer, to my recollection; but it is a long time ago, and I do not pretend to be exact, though I asked the cashier if the stock had been transferred by Mr. Feinour, and he said, Yes; and then I paid the check, and then when

I sold it I went over and put Morris Dyer's name down after mine—that is, I spoke to the cashier and said, "Who put my name down?" and he said "Feinour;" and when I transferred it to Morris Dyer I wrote the name myself, and I noticed Lessassier and Binder's name there in ink.

Q. Therefore you must have known that Mr. Feinour—that the stock came from Lessassier & Binder?

38 A. Certainly; I saw that when I saw those transfers in pencil.

Q. What I want to get at is, Did Mr. Feinour act as a broker in this case?

A. I don't think so; I won't say positively; if he did, I ought to have included in the check the amount of his brokerage.

By the COURT:

Q. How much did you pay for the stock?

A. Fifty dollars a share; forty shares, two thousand dollars ($2,000).

By Mr. MILLER:

Q. Mr. Kennedy, don't you recall that Mr. Feinour called upon you to purchase forty shares of stock in February, 1873?

A. Well, I cannot speak positively, Mr. Miller, whether he called on me or whether I spoke to him.

Q. Don't you recollect that in February, 1873, you bought these forty shares from Lessassier & Binder?

A. Well, I cannot say I bought it from Lessassier & Binder.

39 I bought from Mr. Feinour.

Q. But you do recall that you bought from Mr. Feinour in 1873?

A. I have a memorandum made 24 February—bought forty shares.

Q. Well, now, you dealt with Mr. Feinour?

A. Well, he was a well-known broker, and he might have owned the stock himself.

Q. But at the same time he was known to you as a broker?

A. Yes, sir; I know Mr. Feinour as a broker?

Q. Mr. Kennedy, taxing your memory, can you state whether or not you call upon him (Mr. Feinour) to disclose from whom he was to buy the stock?

A. I don't think so; I have no recollection.

Q. Might it not have been so, and you not recollect it?

A. Yes, sir, it might be so, but — very often; it is well known that questions are asked and not answered, because people

40 don't want — know about transferring of stock.

Q. But, inasmuch as you state that you went to the Crescent City National Bank to make this transfer to Morris Dyer, you must have known that it had been purchased by you through Mr. Feinour or for Mr. Feinour himself?

A. Yes, sir; I saw distinctly as you have it there.

Q. Was that the first time you were apprised that Lessassier & Binder were the vendors of the stock?

A. I think it was; I made that pencil mark on the 15th of March, when I sold it and transferred it to Morris Dyer; that was on the 15th of March.

Q. What is the date of that check, Mr. Kennedy?

A. The 24th day of February.

Q. That date corresponds with the forty shares in the transfer book?

A. Yes, sir.

Q. With that check and the transfer book before you, are
41 you not able to state positively that these forty shares exhibited in the transfer book are the same forty shares that you bought from or through Mr. Feinour?

A. I cannot say that; I know that on the 24th February — my impression is I went and asked if Mr. Feinour had transferred forty shares to me, and being answered in the affirmative I gave him a check.

Q. Did you buy any other shares of stock on the 24th February, 1873?

A. No, sir; I never bought before or since any shares of the Crescent City National Bank.

Q. And that check is the check given by you to pay for the forty shares of stock, which you went subsequently to the bank and transferred to Morris Dyer?

A. Yes, sir.

Q. Mr. Kennedy, you have been the president of the State National Bank for some years; I think you were president of the State National Bank at the date of the failure of the Crescent City National Bank.

42 A. Yes, sir; I was.

Q. As I understand your evidence, you never saw the transfer book until the date when you went to transfer it to Morris Dyer?

A. That is my impression, sir.

Q. What was the date on which you transferred to Morris Dyer?

A. Eleventh of March, I think—15th of March.

Q. The 15th of March, 1873?

A. Yes, sir; I transferred to Morris Dyer.

Q. Had you made any offer to transfer this stock before you went to transfer it to Morris Dyer?

A. Not to my knowledge.

Q. Had you consulted any broker with reference to selling those 40 shares of stock before you went to make the transfer?

A. No, sir; I didn't think I did, I felt so badly about it. I did not wish anybody to know that I had it.

Q. Why didn't you wish anybody to know that?

43 A. Because it was going down every day. I made a bad purchase.

Q. It was because it was going down?

. A. The unexpected and extraordinary collapse of Lizardi & Co., of London. The president of the bank told me, after the bank failed, that the bank could not possibly——

Q. Well, that is immaterial; never mind that. Mr. Kennedy, who was Morris Dyer?

A. Morris Dyer—he is a man in the Crescent Insurance Company.

Q. What was his position in the Crescent Insurance Company?

A. He was the porter.

Q. You sought him yourself, or did he seek you?

A. Neither the one nor the other.

Q. How was it?

A. I sold the stock to Thomas A. Adams, and at his request transferred it to Morris Dyer.

Q. This Morris Dyer, you say, was a porter in the Crescent Insurance Company?

A. Yes, sir.

44 Q. White man or colored man?

A. Colored man.

Q. When was it and why did you transfer to Thos. A. Adams?

A. I did not transfer to him at all; I sold it to him.

Q. And at the same date transferred it to Morris Dyer?

A. Yes, sir.

Q. Mr. Adams was the president of the insurance company at that time?

A. Yes, sir.

Q. And Morris Dyer was the colored porter?

A. Yes, sir; his (Adams') colored porter; in his office.

Q. Now, Mr. Kennedy, was not this transfer by you to Mr. Adams because of the protest of the national bank?

A. I cannot say what Mr. Adams' motives were.

Q. Why did you transfer to Mr. Adams?

45 A. He told me to transfer to Morris Dyer, and I put down in pencil just what he said.

Q. Well, the question was, What caused you to go to Mr. Adams to sell him (40) forty shares of that stock?

A. Well, sir, Mr. Adams owned some of that stock already and we got to bantering each other one day, and I said "I have got (40) forty shares, what will you give for it? He made me an offer, and I accepted it.

Q. Well, Mr. Kennedy, was not the dominant motives in your mind connected with the failure of that bank?

A. Why, sir, I bought it after the failure; before the failure it was par.

Q. I understood you to say you bought it before the failure?

A. No, sir; that is not correct.

Q. You bought it in 1873?

A. Yes, sir, but that was after the failure; I have told you that I bought it after the failure of Lizardi & Co., of London.

Q. Are you certain of that?

A. Yes, sir.

46 Q. Did not that failure follow almost immediately after the failure of the bank?

A. No, sir; it was some little time, I think.

Q. How much time?

A. Well, I cannot say, but they had a large deposit of five or six hundred thousand dollars, and they were already drawing it out.

Q. Well, you knew of the failure of Lizardi & Co.?

A. Yes, sir.

Q. Didn't you know at once that that would be disastrous for the Crescent City National Bank?

A. Well, no; the president told me it would not.

Q. But did'nt you fear it yourself?

A. Not when I bought the stock.

Q. Didn't you fear it at the time you made this transaction with Adams?

A. I was afraid it would turn out disastrously, and there-
47 fore I sold; still I never thought it would be unable to pay its debts; I was perfectly astonished at the result.

Q. Mr. Kennedy, did Mr. Adams make you any payment for that stock?

A. He paid me, sir, a check, which I deposited in bank.

Q. What bank?

A. In the State National Bank, if I recollect. I have got it in my bank-book as having deposited it in the State National Bank.

Q. Had you any subsequent transactions with Mr. Adams?

A. None in relation to that stock whatever.

Q. What did he pay you for it?

A. He paid me eleven ($11) dollars a share. I take this from my book, where this check was deposited.

Q. What was the date of the check?

A. The 15th of March, 1873.

Q. How long after your transaction with Feinour was that check given to you by Mr. Adams?

A. From February 24th to the 15th of March, 1873.

48 Q. You take the date of this transfer to fix the time?

A. No, sir; I take it from my books—from my checks.

Q. Mr. Kennedy, was that money ever returned to you by Mr. Adams?

A. No, sir; never.

Q. What was the consideration between Mr. Adams and Morris Dyer?

A. I know nothing about their personal relations.

Q. You simply know you were requested by Mr. Adams to transfer it to Morris Dyer?

A. I was requested to transfer it to Morris Dyer, which I did. I have known Morris Dyer for a good many years.

Q. The connection between the Crescent City Bank and the Lizardis was very close, was it not?

A. Yes, sir; I think it was; they were their London correspondents.

Q. Had you- bank ever been in the habit of buying Lizar-
49 di's bills—bills of Crescent City National Bank on Lizardi & Co., of London?

A. Yes, sir.

Q. Up to what time did you buy these bills?

A. I think up to a short time before Lizardi failed.

Q. You discontinued as soon as Lizardi failed?

A. Of course.

Q. Did you purchase any more exchange from the Crescent City National Bank after you learned of Lizardi's failure?

A. I cannot say, without examining the books. I may have bought some of their sight — on New York; I cannot say without examining the books. I do not remember about the matter of the brokerage; I simply gave a check for the price of the stock; there is no brokerage entered on my note-book.

Q. Mr. Kennedy, when the certificate—this transfer of stock was exhibited to you, was the space now occupied by the name of Morris Dyer then in blank?

50 A. Oh, yes, sir; I think so; because nobody knew anything about Morris Dyer; I put Morris Dyer's name down there.

Q. At that time, however, you observed the names of E. C. Feinour and S. H. Kennedy in pencil?

A. Yes, sir.

Q. How long these names have been there you are not able to state?

A. No, sir. My impression is from the 24th of that month.

Q. Have you never seen these names before that date?

A. No, sir; because I do not recollect that I ever saw that book before I went there to write the name of Morris Dyer.

Q. Do you recollect the clerk of the bank you had intercourse with when you went to write the name of Morris Dyer?

A. Well, I cannot now recollect who it was that gave me the transfer book; it might have been the cashier or it might — been the clerk.

51 Cross-examination by Mr. McConnell:

Q. Mr. Kennedy, you have spoken in your examination-in-chief of a check of $2,000, date- February 24th, drawn by you in favor of E. C. Feinour. Is this the check?

(Witness handed a check.)

A. That is the check, sir.

Note.—Mr. McConnell offers in evidence the check above referred to, marked "L."

Q. Mr. Kennedy, you have testified that Mr. Adams gave you a check, that you sold this stock to Mr. Adams, and that he paid $11 a share for it, and that he gave you a check for $440, which you deposited in bank.

A. Yes, sir.

Q. Was that check paid to you?
A. It was.
Q. You actually received the $440?
A. I did.
Q. Did you ever return any part of that $440 to Mr. Thos. A. Adams?
52 A. None whatever.
Q. Is there any arrangement of any nature between you and Mr. Adams by which you are in the future to return that $440 or any part of it?
A. None whatever.
Q. You state, in your answer in this case, that your said sale and delivery of that stock was made by you and consum-ated in good faith. Is that statement true?
A. It is true, sir.
Q. Now, Mr. Kennedy, you have stated in your examination-in-chief as one of the reasons why Mr. Adams put this stock in the name of Morris Dyer, who was the colored porter of the Crescent Insurance Company's office, that Mr. Thos. A. Adams already had some of the stock of the Crescent City National Bank. Did he not have a good deal of it?
A. Well, the insurance company of which he was president had.
Q. Can you tell about how many shares the insurance company had?
53 A. Well, I cannot tell at the moment.
Q. Well, were you not a director in that insurance company yourself?
A. Yes, sir.
Q. You were at that time?
A. Yes, sir; I think they had two or three hundred shares.
Q. Well, didn't they continue to hold that stock?
A. Yes, sir.
Q. And the stock perished with the failure of the bank?
A. Yes, sir.
Q. They always held onto it, didn't they?
A. Yes, sir; and had to pay the assessments.
Q. Now, Mr. Kennedy, is it not a fact that Mr. Thos. A. Adams controlled the investments of the Crescent City Insurance Company?
A. To a very great extent.
Q. Was not that one of the reasons why the directors were dissatisfied with him, about his holding onto stock too long?
54 A. Yes, sir.
Q. Was not that a peculiarity of his disposition?
A. Yes, sir; he was inclined that way.
Q. Wasn't it peculiarly so with him? Did not the Louisiana National Bank lose a good deal with him in that way, and didn't he loose a good deal of his money?
A. Oh, yes, sir; he was a very unfortunate man.
Q. Now, sir, when he bought this stock his reason for putting it in the name of Morris Dyer was because the company had a very large amount already on hand?

A. I mentioned, I think, in my examination-in-chief what caused the transaction between us.

Q. You have stated in your examination-in-chief that you and Mr. Adams bantered each other with regard to the Crescent City National Bank stock, and that you told him that you had
55 forty shares of it, and he made you an offer of $11 a share, and you accepted it?

A. Well, I think I asked him to make me an offer and he did so.

Q. And you accepted it?

A. I accepted it.

Q. Did you, or either of you, at that time have any other motive than a *bona fide* selling of the stock the one to the other?

A. None whatever.

Q. What was Mr. Adams' reason for putting it in the name of Morris Dyer?

A. I don't know, sir.

Q. The stock which was held by the Crescent — Insurance Company in the Crescent City National Bank had already been held long anterior to the failing of the bank?

A. Oh! before it was a national bank; they owned it in the old State bank before it was converted.

By Mr. MILLER:

Q. Was not your idea that as Mr. Adams had so much of that stock that he might as well take yours?

56 A. Well, I don't know. It is hard to explain those things when I did it. That is all I can say.

Q. Well, why should you banter Mr. Adams about taking the stock any more than anybody else?

A. Well, we got to discussing it together.

Q. Was it not because the Crescent Insurance Company was a large owner of stock at that time?

A. Well, I don't know that it was.

Note of Evidence. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

NOTE.—Mr. Miller, counsel for plaintiffs, offer- in evidence the charter of the Crescent City National Bank, a printed and written copy, marked "A," and the organization certificate, marked
57 "B," the protest of the bank for the failure of the bank to pay its circulating notes, marked "C."

The appointment of Chas. Case as the receiver of said bank in 1874 in 1873.

The appointment of Frank F. Case as the receiver of said bank in July, 1874, marked "D & E."

The orders for the Comptroller of Currency to enforce the liability of the shareholders, one dated April 7, 1874, and the other, July 23d, 1874, marked "F & G."

The suit of Case, receiver, against Lessassier & Binder, No. 8616, of the United States circuit court, the judgment therein rendered, the receipt of the plaintiff in execution to Lessassier and Binder for the amount of the judgment, with interest and costs and bills of costs, marked H, I, J.

58 The transfer, dated February 24th 1873, signed by Lessassier & Binder, of 40 shares of the Crescent City Bank, exhibiting the name of Morris Dyer, as transferee, and on the margin the name of E. C. Feinour, S. H. Kennedy, and Morris Dyer, in pencil, signed by Lessassier and Binder, contained in the transfer book of the Crescent City National Bank, a copy of which certificate of transfer is to be filed.

NOTE.—Mr. McConnell, counsel for defendant Kennedy, objects to all the documentary evidence which has been offered as being *res inter alios acta*, proceedings had between other parties not affecting and cannot legally affect defendants, and further specially objects to the introduction of any evidence of the memoranda on the margin of said certificate of transfer stock, which is made in pencil, to wit, the 3 names written in pencil, signatures of E. C. Feinour, S. H. Kennedy, and Morris Dyer, on the ground that the only evidence competent or admissible to prove the fact of

59 defendant Kennedy being or having been a stockholder in said national bank, or liable as such to the plaintiffs in this suit or otherwise, is set forth and defined by the national banking law, and especially by the transfer book and the transfer regularly made in writing in said book and a list of the stockholders, as required by law, to be kept by the president of the bank, and that the pencil memorandum on the margin of said transfer book, to wit, the said 3 names in pencil, one of which is given as that of respondent Kennedy, are inadmissible against this respondent on the further ground that they are *res inter alios acta* and statements or writings in pencil of 3d persons and out of the presence of the defendant and not binding on him.

"NOTE."—Mr. Ryon, counsel for E. C. Feinour, makes the same objections as urged by Mr. McConnell.

The court overrules the objections, and counsel except — this ruling and reserve this exception in lieu of a bill.

60 "NOTE."—Mr. Miller offers in evidence copy of letter addressed by plaintiffs to defendants, dated March 11th, 1879, marked "K."

Mr. McConnell offers in evidence the record of suit referred to in Kennedy's answer, No. 7261 of the U. S. circuit court, and the final judgment in said suit in favor of respondent.

"NOTE."—Mr. Miller, counsel for pl'ffs, objects to the admissibility of the record for any other purpose, except to prove *rem ipsam*.

The court reserves its ruling; also offers in evidence the testimony of Messrs. Reynes, H. A. Lessassier, J. M. Seixas, H. V. Ogden, C. L. Ulhorm, and E. C. Feniour.

Mr. McConnell offers in evidence the by-laws and articles of association of the N. O. Savings Inst.

61 *Document "A." Charter of the Crescent City National Bank, Offered in Evidence by Plaintiff. Filed* 13 *May*, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.*
No. 9999.

[5 cts. stamp, C. C. B., Dec 21st, 1871.]

We, the undersigned, the directors of the Crescent City National Bank of New Orleans, in the State of Louisiana, do hereby declare that the owners of two-thirds of the capital stock of said bank have authorized the directors of said bank to make the necessary organization certificate and to change and convert the said bank in a national association under the provisions of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864; and by virtue
62 of said authority and in accordance with the provisions and requirements of the forty-fourth section of said act we do hereby make and execute this organization certificate:

1st. The name and title of this association shall be "The Crescent City National Bank of New Orleans."

2d. The said association shall be located in the city of New Orleans, parish of Orleans, and State of Louisiana, where its operations of discount and deposit are to be carried on.

3d. The capital stock of this association shall be five hundred thousand dollars ($500,000.00), and the same shall be divided in five thousand shares of one hundred dollars each.

4th. The name and residence of each of the stockholders of the said Crescent City Bank, which is to become a national bank under the provisions of the act of Congress aforesaid, and the number of shares of one hundred dollars each held by each stockholder — as follows:

63 Names.	Residences.	No. of shares.	Amounts.
Alexander & Co., J. B.	New York	250	$25,000 00
Abraham, Henry	New Orleans	5	500 00
Alberb, J. J.	" "	2	200 00
Aleus, Sherk & Antery	" "	70	7,000 00
Adler, Mrs.	" "	3 1/5	320 00
Alexander, J. B.	New York	70	7,000 00
Ass'n for the relief of J. W. & O.	New Orleans	2	200 00
Atlantic Ins'ce Co.	" "	25	2,500 00
Baker, Anna Maria	" "	3	300 00
Barnwell, James	" "	2	200 00
Bank of New Orleans	" "	1	100 00
Brander, ex. Jas. S.	" "	10	1,000 00
Baquié, Charles	" "	25	2,500 00
Barba, José	" "	2	200 00
Bass, Nehemia	" "	1 2/5	140 00

	Names.	Residences.	No. of shares.	Amounts.
	Brannin, John S.	New Orleans	30	3,000 00
	Briere, T.	" "	17	1,700 00
	Bridge, F. E.	" "	5	500 00
	Bogart, Mrs. Jane	" "	3	300 00
	Boyd, Southgate R.	" "	2	200 00
	Brown, Wm.	" "	31	3,100 00
	Robb, Chas. P.	" "	4	400 00
	Bryan, D. S.	" "	22	2,200 00
64	Burbridge, Mrs. V. N.	" "	10	1,000 00
	Buckner, R. T.	" "	10	1,000 00
	Bell & Co., W. H.	" "	10	1,000 00
	Behan, Thorn & Co.	" "	10	1,000 00
	Caruthers, Mrs. S. E.	" "	$\frac{2}{5}$	40 00
	Clapp, Geo. L.	" "	55	5,500 00
	Cabel, M. W.	" "	$1\frac{1}{5}$	120 00
	Cenas, L. E.	" "	5	500 00
	Crescent Mut. Ins. Co.	" "	130	1,300 00
	Cooley, Margaret H.	" "	2	200 00
	Cobb, Dalhonde & Co.	" "	5	500 00
	Cromwell, W. H.	" "	3	300 00
	Corley, Thomas	" "	4	400 00
	Cohn & Seligman	" "	10	1,000 00
	Draper, Mrs. A. H.	New York	2	200 00
	Delta Ins. Co.	New Orleans	50	5,000 00
	Ellison, Wm. P.	" "	10	1,000 00
	Fabeo, W'ow. L.	" "	4	400 00
	Factors' & Traders' Ins. Co.	" "	80	8,000 00
	Friedlander, Samuel	" "	26	2,600 00
	Flower, Richard	" "	35	3,500 00
	Forstall, Placide	" "	80	8,500 00
	Gardner, L. H.	" "	6	600 00
65	Garrard, Craig & Co.	" "	20	2,000 00
	Graham, George	" "	1	100 00
	Graham, O. B.	" "	3	300 00
	Gregory, Wm.	" "	1	100 00
	Goodman, Mrs. A.	" "	2	200 00
	Gardner & Co., S. H.	" "	150	15,000 00
	Hart & Co., E. J.	" "	2	200 00
	Hellwege, Peter	" "	2	200 00
	Heatlon, George	" "	13	1,300 00
	Hebrew Foreign Mission	" "	15	1,500 00
	Hersch, M.	" "	5	500 00
	Hoyan, E. B.	" "	$1\frac{1}{5}$	120 00
	Hynson, Geo. W.	" "	186	18,600 00
	Hunt & McCanby	" "	5	500 00
	Hyman, Mary H.	" "	20	2,000 00
	Jumonville, R.	" "	24	2,400 00
	Juge *fils*, Mrs. Paul	" "	12	1,200 00
	Katz & Barnett	" "	30	3,000 00
	Kelly, Albert	New York	30	3,000 00
	Kleim, H. M.	New Orleans	10	1,000 00
	Kolb, Emelie	" "	2	200 00
	Kolb, Caroline	" "	2	200 00
	Lacombe, L.	" "	10	1,000 00
66	Lanata, Ant.	" "	26	2,600
	Lacroix, F.	" "	20	2,000
	Leeds & Co.	" "	2	200
	Lecesne, Jules	" "	10	1,000
	Lessassier & Binder	" "	176	17,600
	Lehman, Newgass & Co.	" "	15	1,500
	Leaumont, G.	" "	5	500
	Lewis, A.	" "	$2\frac{2}{5}$	240

	Names.	Residences.	No. of shares.	Amounts.
	Levy, E. L.	New Orleans	40	4,000
	Lizardi, M. A. de	" "	726	72,600
	Lizardi & Co., F. de	" "	89	8,900
	Levi & Navra	" "	50	5,000
	Lipscomb, W. C.	" "	5	500
	McConnell, James	" "	4	400
	McClellan, W. H.	" "	24	2,400
	McWilliams, James	" "	18	1,800
	McIntosh, John	" "	2	200
	McLellan, Aldin	" "	6	600
	McRae, tutor of M. J. Speake	" "	5	500
	McRae, " S. M. "	" "	5	500
	McComb, H. S.	Wilmington, Del.	250	25,000
	Merchants' Ins. Co.	New Orleans	5	500
	Mechanics' & Traders' B'k	" "	20	2,000
67	Monosky, Fred.	" "	1	100
	Mure, John	" "	5	500
	Murphy, James	" "	7	700
	McNeely & Milburn	" "	10	1,000
	Moore, Janey & Hyams	" "	60	6,000
	New Orleans Savings Inst.	" "	51	5,100
	Newman, Edward	" "	60	6,000
	Nugent, F. R.	" "	14	1,400
	O'Neil, Bridget	" "	1 4/5	180
	Oliver, J. R.	" "	4	400
	Oliver, Gus.	" "	5	500
	O'Dowd & Sullivan	" "	2	200
	O'Donnell, Peter	" "	10	1,000
	Palms, Mary R.	" "	5	500
	Pendleton, W. E.	" "	3	300
	Phelps, McCullert & Co.	" "	120	12,000
	Price, John W.	" "	5	500
	Pritchard & Bickham	" "	75	7,500
	Ping Bros.	" "	1	100
	Pipes, David	" "	20	2,000
	Raymond, W. C.	" "	2	200
	Rector, W., & V. of Trinity Church	" "	6	600
	Robinson, W. G.	" "	10	1,000
68	Rusha, E. M.	" "	5	500
	Somat, minor Amelin	" "	1/5	20
	Sawyer, W. R.	" "	2	200
	Shakespeare, J. A.	" "	27	2,700
	Sanford, A. W.	" "	10	1,000
	Seixas, H. O.	" "	4	400
	Stevens, Wm.	" "	10	1,000
	Stewart, Andrew	" "	5	500
	Stevens & Seymour	" "	13	1,300
	Shiff, Arthur	" "	12	1,200
	Singleton, C. B.	" "	2	200
	Smith & Co., S. B.	" "	1	100
	Shamer, Edm.	" "	2 4/5	280
	Soniot, T.	" "	4/5	80
	Soria, Cohen M.	" "	156	15,600
	Sun Mutual Ins. Co.	" "	12	1,200
	Summers, E. H.	" "	244 1/5	24,420
	Sutherlin, M. J.	" "	2 2/5	240
	Schuppert, M.	" "	1	100
	Summers & Branim	" "	59	5,900
	Shomway, Sam'l A.	" "	10	1,000
	Synn, Mrs. Jane A.	" "	9	900
	Stewart, Bro. & Co.	" "	50	5,000
	Simmons, T. M.	" "	50	5,000

	Names.	Residences.	No. of shares.	Amounts.
	Touro Relief Society	New Orleans	10	1,000
69	Todd, Sam'l M.	" "	2	200
	Townsend, J. R.	" "	2	200
	Thornhill, R.	" "	13	1,300
	Valle, Pedro del	" "	520	52,000
	Vennard, H. T.	" "	5	500
	Villes	" "	2	200
	Villon, J. C.	" "	4	400
	Vorhaben, Henry	" "	2	200
	Wagner, R.	" "	1	100
	Wamins, J. J.	" "	4	400
	West, B. J.	" "	58	5,800
	Wilson, Henry	" "	2	200
	Witherspoon, R.	" "	20	2,000
	Wolf Bros.	" "	3	300
	Total.		5,000	500,000

70 In witness whereof we have hereunto set our hands this twenty-first day of December, eighteen hundred and seventy-one.

E. H. SUMMERS.
RICHARD FLOWER.
W. A. DE LIZARDI.
E. NEWMAN.
L. H. GARDNER.
GEO. W. HYNSON & CO.
C. M. SORIA.
ANDREW STEWART.

On the twenty-first day of December, eighteen hundred and seventy-one (1871), personally came before me, Edward Barnett, a notary public in and for the parish of Orleans, city of New Orleans, and State of Louisiana, Messrs. E. H. Summers, L. H. Gardner, C. M. Soria, M. A. de Lizardi, E. Newman, George W. Hynson, Andrew Stewart, and Richard Flower, directors of the Crescent City Bank, to me well known, who severally acknowledged that they executed the foregoing certificate for the purpose therein mentioned.

71 Witness my hand and seal of office the year and date aforesaid.

[SEAL.] (Signed) EDW'D BARNETT,
Not. Pub.

I certify that the organization certificate of the Crescent City National Bank of New Orleans was executed in duplicate, and that one of the instruments so executed is the foregoing, and that — other, in all respects like the foregoing and stamped in the same manner, is on file with said bank.

(Signed) E. H. SUMMERS, *Pres'd't.*
New Orleans, December 21st, 1871.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY.

I certify the foregoing to be a true and complete copy of the original organization certificate of the Crescent City National Bank of New Orleans, La., with the acknowledgements thereof, now on file and of record in this office, and of the whole of such originals,
72 and that such originals were so filed and recorded on the 27th day of December, A. D. 1871.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 23d day of April, A. D. 1880.

[SEAL.] (Signed) JNO. JAY KNOX,
Comptroller of the Currency.

Articles of Association and By-Laws of the Crescent City National Bank of New Orleans.

Articles of association.

We, the undersigned, the directors of the Crescent City Bank, in the State of Louisiana, having been authorized by the owners of two-thirds of the capital stock of said bank to change and convert the said bank into a national banking association, under and according to the provisions of the act of Congress entitled "An act to
73 provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June third, 1864, and to execute articles of association, do hereby, in our own behalf and in behalf of the stockholders, whom we represent, make and execute the following articles of association:

Article first.

The name and title of the association into which the Crescent City Bank is to be changed shall be "The Crescent City National Bank of New Orleans."

The Crescent City National Bank of New Orleans, being converted from a State bank into a national bank under the acts of Congress, takes charge of all the assets and assumes all the liabilities of the late Crescent City Bank, with the rights to sue and be sued in the name of "The Crescent City National Bank."

Article second.

74 & 75 The place where its banking house or office shall be located and its operations of discount and deposit carried on and its general business conducted shall be the city of New Orleans, in the parish of Orleans and State of Louisiana.

Article third.

The object of the association is to carry on the business of banking by receiving deposits, buying and selling gold and silver bullion

and bills of exchange, lending money on personal security, discounting bills, notes, and other evidences of debt, and generally to exercise such incidental powers and privileges as are now, or may hereafter be, conferred on them by law.

Article fourth.

The board of directors shall consist of seven stockholders, each of whom shall own at least fifty shares of the capital stock of said bank.

The regular annual election of directors shall be held on the fourth Tuesday of January of each year, but if no election
76 shall be held on that day it may be held on any other day, according to the provisions of the tenth section of the act of Congress above mentioned, and all elections shall be held according to such regulations as may be prescribed by the board of directors of the association not inconsistent with the provisions of the aforesaid act.

Article fifth.

The capital stock of this association shall be five hundred thousand dollars, to be divided into shares of one hundred dollars each, but the capital may be increased, according to the provisions of the thirteenth section of said act, to any sum not exceeding one million dollars; and in case of the increase of the capital of the association each stockholder shall have the privilege of subscribing for such number of shares of the proposed increase of the capital stock as he may be entitled to according to the number of shares owned by him before the stock is increased.

Article sixth.

The board of directors, four of whom shall be a quorum
77 to do business, shall elect one of their members to be president of this association, who shall hold his office (unless he shall become disqualified or be sooner removed by a two-thirds vote of all the members of the board) for the term for which he was elected a director; and they shall have power to elect a vice-president, who shall also be a *a* member of the board of directors, and to elect or appoint a cashier and such other officers and clerks as may be required to transact the business of the association, to fix the salaries to be paid to them, and to continue them in office or to dismiss them, as in the opinion of a majority of the board the interest of the association may demand. They shall also have power to define the duties of the officers and clerks of the association, to require bonds from them, and to fix the penalty thereof; to regulate the manner in which elections of directors shall be held and to appoint judges of the elections; to provide for an increase of the capital of the
78 association and to regulate the manner in which such increase shall be made, and generally to do and perform all the acts that it may be legal for a board of directors to do under the act aforesaid; and they shall also have the power to make all by-laws that

it may be proper and convenient for them to make under said act, and for the general regulation of the business of the association, and the entire management and administration of its affairs, which by-laws may prohibit, if they directors shall so determine, the transfer of stock owned by any stockholder who may be liable to this association either as principal debtor or otherwise, without the consent of the board.

Article seventh.

This association shall continue for the period of twenty years from the date of the organization certificate, unless sooner dissolved by the act of its stockholders owning at least two-thirds of its
79 stock, who may dissolve and close up the association in such manner as they may deem to be for the interest of the stockholders and creditors of the asssociation, but subject to the restrictions, requirements, and provisions of said act of Congress of June third, 1864, aforesaid.

Article eighth.

These articles of association may be changed or amended at any time by stockholders owning a majority of the stock of the association, in any manner not inconsistent with the provisions of the act of Congress herein above referred to, and the board of directors or any three stockholders may call a meeting of the stockholders for the purpose of considering such amendments.

In witness whereof we, the directors aforesaid, for ourselves as such directors and in behalf of the stockholders of the Crescent City Bank, have hereunto set our hands this twenty-first day of
80 December, in the year of our Lord one *one* thousand eight hundred and seventy-one.

E. H. SUMMERS.
L. H. GARDNER.
C. M. SORIA.
M. H. DE LIZARDI.
E. NEWMAN.
G. W. HYNSON.
ANDREW STEWART.
RICH'D FLOWER.

On this twenty-first day of December, eighteen hundred and seventy-one, personally came and appeared before me, Edward Barnett, a notary public in and for the parish of Orleans, city of New Orleans, and State of Louisiana, Messieurs E. H. Summers, L. H. Gardner, C. M. Soria, M. H. de Lizardi, E. Newman, George W. Hynson, Andrew Stewart, and Richard Flower, directors of the Crescent City Bank of New Orleans, to me well known, who severally acknowledged that they executed the foregoing articles of association for the purposes therein mentioned.

81 Witness my hand and seal of office the day, month, and year aforesaid.

[SEAL.] EDW'D BARNETT,
Not. Pub.

I certify that the articles of association of the "Crescent City National Bank of New Orleans" were executed in duplicate, and that one of the instruments so executed is the foregoing, and that the other, in all respects like the foregoing and stamped in the same manner, is on file with said bank.

New Orleans, December 21st, 1871.

E. H. SUMMERS, *President.*

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Feb'y 15th*, 1872.

Whereas by satisfactory evidence presented to the undersigned it has been made to appear that the "Crescent City National Bank of New Orleans," in the city of New Orleans, in the parish of
82 Orleans and State of Louisiana, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act:

Now, therefore, I, Hiland R. Hulburd, Comptroller of the Currency, do hereby certify that the Crescent City National Bank of New Orleans, in the city of New Orleans, in the parish of Orleans and State of Louisiana, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof witness my hand and seal of office this fifteenth day of February, in the year of our Lord one thousand eight hundred and seventy-two.

HILAND R. HULBURD,
Comptroller of Currency.

83 *Rules of Order.*

When the president takes the chair the members shall take their seats.

The minutes of the preceding meeting shall be read before the board proceeds to any other business, and no debate shall be admitted nor question taken at such reading except to correct errors or inaccuracies. The state of the bank shall then be read and the discounts made.

The president shall be the judge of order, and his decisions shall be immediately submitted to, unless two members require an appeal to the board. He shall name all committees, unless herein otherwise provided or unless the board shall otherwise determine.

If business of different kinds shall be called for at the same time by different persons the president will judge and give preference accordingly.

The yeas and nays shall be taken on any question if called for by one member previous to the decision of such question,
84 but no motion for reconsideration shall be permitted unless made and seconded by members who are in majority on the original question.

At the request of two of the board the names of the members who make and second a motion shall be entered on the minutes.

All resolutions entered on the minute book without the yeas and nays being specially noted shall be considered as passed by the unanimous vote of all the directors present at said meeting; nor shall any member at any future period be permitted to plead that he did not give his assent to the same.

No member shall be permitted to vote on any question in which he is directly interested.

By-Laws of the Crescent City National Bank of New Orleans.

Organized under the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 30, 1864.

85 *Elections.*

SEC. 1. The regular annual meetings of the stockholders of this bank for the election of directors shall be held at its banking house on the fourth Tuesday in January of each year, between the hours of ten and two of said day; thirty days' notice of the time and object of which meeting shall be given by the cashier of this bank by publication in one or more daily papers. And it shall be the duty of the board of directors previous to the time of said election to appoint three stockholders to be judges of said election, who shall hold and conduct the same, and who shall, after the election has been held, notify under their hands the cashier of this bank of the result thereof and the names of the directors-elect.

SEC. 2. The cashier, upon receiving the returns of the judges of election as aforesaid, shall cause the same to be recorded upon the minute book of the bank, and shall notify the directors-elect of their election, to meet at the banking house of this bank on the fol-

86 lowing Thursday for the purpose of organizing the new board.

If at the time fixed for the meeting of the directors-elect there should not be a quorum present the members present may adjourn from time to time until a quorum is obtained.

SEC. 3. If for any cause the annual election of directors should not be held on the fourth Tuesday of January the board shall order the election to be held on some other day, of which special notice shall be given, in accordance with the requirement of the 10th section of the act, and judges appointed and returns made and directors-elect notified, according to the requirements and provisionsof sections one and two of these by-laws.

Officers.

SEC. 4. The officers of this bank shall be a president, vice-president, cashier, tellers, book-keeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business. All officers and persons in the employ of the bank are chosen or

appointed by the board of directors, and hold their offices and
87 employments during the pleasure of the board. Their salaries are fixed by resolutions of the board. The cashier shall lay before every board of directors, on their entering into office, a list of the officers and persons in the employ of the bank, with their salaries, the names of their securities, and the amount for which the securities are bound. It shall be the duty of the board of directors to take order on said list of officers as to their fitness and other qualities and the sufficiency of their securities.

SEC. 5. The president shall hold his office (unless he shall resign or become disqualified or be removed) for the current year for which the board of which he shall be a member was elected. In case a vacancy in the board of directors or in the office of the president shall occur during any current year it shall be filled by the board.

SEC. 6. The cashier and the subordinate officers shall be appointed to hold their offices, respectively, during the pleasure of the board.

SEC. 7. The cashier of this bank shall be responsible for all
88 the moneys, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of fifteen thousand dollars, conditioned for the faithful and honest discharge of his duties as such cashier and that he will faithfully apply and account for all such moneys, funds, and valuables and deliver the same on proper demand to the order of the board of directors of this bank or the person or persons authorized to receive them. It shall be the duty of the cashier to countersign at the bank all notes and bills to be signed by the president or by the order of the board; carefully to observe the conduct of all persons employed under him and report to the board such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the settlements of the cash account of the bank, to take charge of the cash, and whenever the actual amount materially disagrees with the balance of the cash account to report the same to the president and directors without delay; to lay
89 before them at every discount day a general statement of the accounts of the bank; attend all meetings of the board, keep a fair and regular record of its proceedings, give such information to the board as may be required, consult with the committees when required, and also to perform such other services as may be required of him by the board.

SEC. 8. The president of this bank shall be responsible for all such sums of money and property of every kind as may be entrusted to his care or placed in his hands by the board of directors, or by the cashier or otherwise come into his hands as president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors or to any other person or persons authorized to demand and receive the same.

SEC. 9. The teller shall be responsible for all such sums of money, property, and funds, of every description as may from time to time be placed in his hands by the cashier or otherwise come into

At the request of two of the board the names of the members who make and second a motion shall be entered on the minutes.

All resolutions entered on the minute book without the yeas and nays being specially noted shall be considered as passed by the unanimous vote of all the directors present at said meeting; nor shall any member at any future period be permitted to plead that he did not give his assent to the same.

No member shall be permitted to vote on any question in which he is directly interested.

By-Laws of the Crescent City National Bank of New Orleans.

Organized under the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 30, 1864.

85 *Elections.*

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SEC. 2. The cashier, upon receiving the returns of the judges of election as aforesaid, shall cause the same to be recorded upon the minute book of the bank, and shall notify the directors-elect of their election, to meet at the banking house of this bank on the fol-
86 lowing Thursday for the purpose of organizing the new board. If at the time fixed for the meeting of the directors-elect there should not be a quorum present the members present may adjourn from time to time until a quorum is obtained.

SEC. 3. If for any cause the annual election of directors should not be held on the fourth Tuesday of January the board shall order the election to be held on some other day, of which special notice shall be given, in accordance with the requirement of the 10th section of the act, and judges appointed and returns made and directors-elect notified, according to the requirements and provisionsof sections one and two of these by-laws.

Officers.

SEC. 4. The officers of this bank shall be a president, vice-president, cashier, tellers, book-keeper, and such other officers as may be from time to time required for the prompt and orderly transaction of its business. All officers and persons in the employ of the bank are chosen or

appointed by the board of directors, and hold their offices and
87 employments during the pleasure of the board. Their salaries are fixed by resolutions of the board. The cashier shall lay before every board of directors, on their entering into office, a list of the officers and persons in the employ of the bank, with their salaries, the names of their securities, and the amount for which the securities are bound. It shall be the duty of the board of directors to take order on said list of officers as to their fitness and other qualities and the sufficiency of their securities.

SEC. 5. The president shall hold his office (unless he shall resign or become disqualified or be removed) for the current year for which the board of which he shall be a member was elected. In case a vacancy in the board of directors or in the office of the president shall occur during any current year it shall be filled by the board.

SEC. 6. The cashier and the subordinate officers shall be appointed to hold their offices, respectively, during the pleasure of the board.

SEC. 7. The cashier of this bank shall be responsible for all
88 the moneys, funds, and valuables of the bank, and shall give bond, with security, to be approved by the board, in the penal sum of fifteen thousand dollars, conditioned for the faithful and honest discharge of his duties as such cashier and that he will faithfully apply and account for all such moneys, funds, and valuables and deliver the same on proper demand to the order of the board of directors of this bank or the person or persons authorized to receive them. It shall be the duty of the cashier to countersign at the bank all notes and bills to be signed by the president or by the order of the board; carefully to observe the conduct of all persons employed under him and report to the board such instances of neglect, incapacity, or bad conduct as he may discover in any of them; daily to examine the settlements of the cash account of the bank, to take charge of the cash, and whenever the actual amount materially disagrees with the balance of the cash account to report the same to the president and directors without delay; to lay
89 before them at every discount day a general statement of the accounts of the bank; attend all meetings of the board, keep a fair and regular record of its proceedings, give such information to the board as may be required, consult with the committees when required, and also to perform such other services as may be required of him by the board.

SEC. 8. The president of this bank shall be responsible for all such sums of money and property of every kind as may be entrusted to his care or placed in his hands by the board of directors, or by the cashier or otherwise come into his hands as president, and that he will faithfully apply and account for all sums of money and other property of the bank that may come into his hands as such president, and pay over and deliver the same to the order of the board of directors or to any other person or persons authorized to demand and receive the same.

SEC. 9. The teller shall be responsible for all such sums of money, property, and funds, of every description as may from time to time be placed in his hands by the cashier or otherwise come into

90 his possession as teller, and shall give bond, with security, to be approved by the board, in the penalty of ten thousand dollars, conditioned for the honest and faithful discharge of his duties as teller, and that he will faithfully apply, account for, and pay over all moneys, property, and funds of every description that may come into his hands by virtue of his office as teller to the order of the board of directors aforesaid or to such person or persons as may be authorized to demand and receive the same.

Seal.

SEC. 10. The following seal is adopted by the board of this bank.

Conveyance of Real Estate.

SEC. 11. All transfers and conveyances of real estate shall be made by the bank and under the seal thereof in accordance with the orders of the board, and shall be signed by the president.

Increase of Stock.

SEC. 12. Whenever an increase of stock shall be deter-
91 mined upon in accordance with the provisions of the articles of association of this bank it shall be the duty of the board to notify all the stockholders of the same and to cause a subscription to be opened for such an increase of capital. In the increase of capital each stockholder shall have the privilege of subscribing for such number of shares of the new stock as he may be entitled to subscribe for according to the existing stock in the bank. If any stockholder should fail to subscribe for the amount of stock to which he may be entitled the board of directors may determine what disposition shall be made of the privilege of subscribing for the unsubscribed stock.

Business of the Bank.

SEC. 13. The bank shall be open for business from 9 o'clock a. m. to 3 o'clock p. m. and at such other time as may be determined by the board of each day of the year, excepting Sundays and days recognized by the laws of this State as national and religious holidays.

92 *Minutes.*

SEC. 14. The articles of association of this bank and the returns of the judges of the elections shall be recorded in the minute book, in which shall also be recorded the proceedings of the board at all regular and special sessions. The minutes of each meeting shall be signed by the president and attested by the cashier.

Transfers of Stock.

SEC. 15. The stock of this bank shall be assignable only on the books of this bank, subject to the restrictions and provisions of the act, and a transfer book shall be kept, in which all assignments and

transfers of stock shall be made. Transfers of stock shall not be suspended preparatory to a declaration of dividends, and, except in cases of agreement to the contrary expressed in the assignments, dividends shall be paid to the stockholder in whose name the stock shall stand on the day on which the dividends are declared.

93 SEC. 16. Certificates of stock signed by the president and cashier may be issued to stockholders, and the certificate shall state upon the face thereof that the stock is transferable only upon the books of the bank, and when stock is transferred the certificates thereof shall be returned to the bank and canceled and new certificates issued.

Expenses.

All the current expenses of the bank shall be paid by the cashier, who shall every six months, or oftener if required to do so, make the board a detailed statement thereof.

Contracts.

SEC. 17. All contracts, checks, drafts, &c., and all receipts for circulating notes received from the Comptroller of the Currency shall be signed by the president and cashier.

Examinations.

SEC. 18. There shall be appointed by the board every month a committee, whose duty it shall be to examine into the affairs

94 of the bank, to count its cash, and every six months compare its assets and liabilities with the balances on the general ledger for the purpose of ascertaining whether or not the books are correctly kept and the condition of the bank corresponds therewith, and whether or not the bank is in a sound and solvent condition; the result of which examination shall be reported to the board at their next regular meeting.

Meetings.

SEC. 19. The regular meetings of the board shall be held on Wednesdays at 11 o'clock a. m. Special meetings may be called by the president or cashier, and any director who shall be absent from the regular meetings of the board without leave of absence granted by the board for four successive weeks, unless said absence is caused by sickness, shall forfeit his membership of the board and his place be declared vacant.

SEC. 20. Insolvency of a director vacates his seat in the board.

95 SEC. 21. No director shall be permitted to examine the cash account of any person with the bank. Neither the president or directors or any of the officers of the bank — allowed to disclose its confidential affairs or the opinion and manner of voting of any of the directors. Every director or officer of the bank on entering in office shall be considered as having pledged his honor faithfully to observe this rule.

SEC. 22. The board of directors shall have power to call general meetings of the stockholders at any time they may deem proper, giving thirty days' notice of the time, place, and objects of such meeting in two daily papers published in the city of New Orleans.

Quorums.

SEC. 23. Four of the directors shall be a quorum to do business.

SEC. 24. The cashier and clerks of the bank shall not, on pain of dismissal, engage in any commercial pursuits whatever, either directly or indirectly, nor furnish their endorsements on any
96 note or bill of exchange arising out of any commercial transactions, or give their signatures to any custom-house bond; and no clerk or porter of the bank shall keep an account therein, but shall receive his salary monthly from the cashier. Every clerk is bound to keep secret the business of the bank, and no clerk of the bank shall be owner of the stock thereof.

SEC. 25. Loss of certificates must be advertized six weeks, at least once a week, in two newspapers in New Orleans, and ninety days after the publication of said notice new certificates may be issued on the applicant giving proper security.

SEC. 26. Every person who opens an account and transacts business with this bank shall subscribe his name in a book to be kept for that purpose—to be called the book of signatures; and all the persons who compose any house, keeping an account with this bank, shall subscribe their names and the signatures of the firm in this book.

97 SEC. 27. All notes discounted by the bank shall be charged to the account of the payer or payers when due, provided there are funds in bank to the credit of such person or persons, and he, she, or they shall neglect to have the same taken up before the shutting of the bank on the last day of grace.

SEC. 28. All notes and bills offered for discount in the Crescent City National Bank of New Orleans, drawn or endorsed by persons living out of the limits of the City of New Orleans, shall be made payable at some bank in the said city or at some known place of business.

SEC. 29. On every discount day the name of every person who shall have overdrawn the bank since the last discount day shall be reported to the bank. The cashier is, moreover, authorized and directed to close the accounts of all persons dealing with the bank who may overdraw, and, after being notified thereof, shall
98 neglect to refund the amount previous to *to* the next discount day succeeding that on which the overdraft shall have been reported to the board.

SEC. 30. These by-laws may be changed or amended by a vote of two-thirds of the directors.

Adopted March 13th, 1872.

E. H. SUMNERS, *President.*
CHAS. FAURIE, JR., *Cashier.*

Document "B." Organization Certificate of Crescent City National Bank, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY,
WASHINGTON, *Febr'y 15th*, 1872.

Whereas, by satisfactory evidence presented to the under-
99 signed, it has been made to appear that the Crescent National Bank of New Orleans, in the city of New Orleans, in the parish of Orleans and State of Louisiana, has been duly organized under and according to the requirements of the act of Congress entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, and has complied with all the provisions of said act required to be complied with before commencing the business of banking under said act:

Now, therefore, I, Hiland R. Hulburd, Comptroller of the Currency, do hereby certify that the Crescent City National Bank of New Orleans, in the parish of Orleans and State of Louisiana, is authorized to commence the business of banking under the act aforesaid.

In testimony whereof witness my hand and seal of office
100 this 13th day of February 1872.

[SEAL.] (Signed) HILAND R. HULBURD,
Comptroller of Currency.

No. 1937.

Document "C." Protest of the Bank for Failure to Pay its Circulating Notes, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

STATE OF LOUISIANA, *Parish of Orleans:*

By this public instrument of protest be it known that on this seventeenth day of March, in the year one thousand eight hundred and seventy-three, at the request of Frank F. Case, of this city, a holder of circulating notes of the Crescent City National Bank of
New Orleans, a banking association of this city organized
101 under the provisions of the national currency act, — to the amount of thirteen hundred and ten dollars, of the following denominations, viz:

Three one-hundred-dollars bills numbered, respectively, 307,965, 208,012, 308,092; two fifty-dollars bills numbered, respectively, 307,762, 307,818; six twenty-dollars bills numbered, respectively, A 711,255, 712,303, 712,943, 771,990, 712,998, and 713,029; twenty-four

ten-dollars bills numbered, respectively, A 710,507, 710,643, 710,637, 710,737, 710,910, 711,035, 711,031, 710,57-, 711,234, 711,274, 711,281, 711,322, 711,398, 711,770, 711,962, 711,992, 712,196, 712,445, 712,607, 712,694, 712,781, 712,995, 713,104, and 713,345; and one hundred & ten five-dollars bills numbered, respectively, H 916,937, 917,063, 917,084, 917,105, 917,234, 917,247, 917,474, 917,498, 917,587, 917,644, 917,690, 917,705, 917,771, 926,848, 926,971, 927,144, 927,221, 927,366, 927,498, 927,514, 927,518, 927,730, 927,805, 927,808, 927,845,
102 927,984, 928,295, 928,330, 928,641, 936,431, 936,545, 959,767, 959,797, 959,962, 960,049, 960,087, 960,214, 960,308, 960,337, 960,338, 960,459, 960,605, 960,683, 960,671, 960,736, 960,824, 960,895, 960,915, 961,003, 961,181, 961,443, 961,541, 961,588, 973,342, 973,422, 973,489, 973,506, 973,618, 973,622, 973,667, 973,771, 973,892, 984,903, 944,031, 974,128, 974,141, 984,802, 985,216, 984,936, 984,969, 984,997, 985,098, 985,298, 985,204, 985,221, 985,265, 985,274, 994,515, 985,341, 994,446, 994,466, 994,529, 995,003, 994,551, 994,996, 995,052, 995,083, 973,945, 995,213, 995,264, 995,270, 995,293, and 9 — (or 2798 bank Nos., and K Nos. 8492, 8504, 8542, 8612, 8638, 8635, 8691, 8764, 8897, 8910, 8923, 9023, 9069, 9143, 9150, 9203, 9317.

I, Andrew Hero, Jr., a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and qualified, presented said thirteen hundred & ten dollars of circulating notes of said Crescent City National Bank of New Orleans
103 at its banking house or office, in this city, in one package, to the paying-teller of the Crescent City National Bank of New Orleans during the usual hours of business in the presence of the president and cashier of said bank, and demanded the payment of redemption of said notes in lawful money of the United States, and was by said paying-teller answered that the same could not be paid or redeemed for want of a sufficient quantity of lawful money of the United States.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, against all whom it doth or may concern for all damages, costs, expenses, charges, and interest suffered or to be suffered for want of payment or redemption by said Crescent City National Bank of New Orleans of aforesaid thirteen hundred and ten dollars of its circulating notes.

Thus done and protested in duplicate in the presence of
104 George Cenas and Paul A. Conand, both of this city, witnesses who have signed with me, the notary.

(Signed) P. A. CONAND.
GEO. CENAS.
ANDREW HERO, JR.,
Not. Pub.

A true copy of the original act of protest on file and of record in my office.

New Orleans, June 23d, 1880.

[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

Document D. Appointment of Frank F. Case as Receiver, 8th July, 1874, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

TREASURY DEPARTMENT,
OFFICE COMPTROLLER OF CURRENCY, *July 8th*, 1874.

Whereas Charles Case was duly appointed and commissioned receiver of the Crescent City National Bank of New Orleans,
105 in the State of Louisiana, on the 18th day of March, 1873; and whereas said Charles Case proposes to resign his commission as receiver of said bank, leaving the said receivership vacant:

Now, therefore, be it known that I, John J. Knox, Comptroller of the Currency, do hereby appoint Frank F. Case to be receiver of the Crescent City National Bank of New Orleans, to take effect upon the resignation of said Charles Case, with all the powers, duties, and responsibilities given to or imposed upon a receiver under the provisions of the act entitled "An act to provide a national currency, secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864.

In witness whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents, at
106 the city of Washington, in the District of Columbia, the day and year first above written.

[SEAL.] (Signed) JNO. JAY KNOX,
Comptroller of the Currency.

Document E. Appointment of Charles Case as Receiver, 18th March, 1873, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF CURRENCY,
WASHINGTON, D. C., *M'ch 18th*, 1873.

Notice having been received by me that "The Crescent City National Bank of New Orleans," a national banking association formed persuant to the laws of the United States and located in the city of New Orleans, State of Louisiana, had failed to redeem its circulating notes when payment thereof was legally demanded
107 at the office of said association, and being satisfied from the report of a special agent appointed as provided in section 47 of the national currency act that the said association has failed to redeem in lawful money of the United States its circulating notes when payment thereof was legally demanded during the

usual hour of business at the office of said association and is in default.

Now, therefore, I, John Jay Knox, Comptroller of the Currency, in pursuance of the power and authority vested in me by law, do hereby appoint Charles Case, of the City of New Orleans, in the State of Louisiana, receiver for "The Crescent City National Bank of New Orleans," with all the powers, duties, and responsibilities given or imposed upon a receiver under the provisions of the act entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1884.

108 In testimony whereof I have hereunto subscribed my name and have caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, the day and year above written.

[SEAL.] (Signed) JOHN JAY KNOX,
Comptroller of the Currency.

Document F. Order of Comptroller of Currency to Enforce Liability of Shareholders, Dated April 7th, 1874, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.*
No. 9999.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
WASHINGTON, *April 7th*, 1874.

SIR: Having ascertained and determined that the assets
109 of the Crescent City National Bank of New Orleans are insufficient to discharge the legal debts and liabilities thereof, and that in order to discharge the same it is necessary to enforce the personal liability of the individual stockholders owning shares of stock in said bank at the date of its suspension, so far as the same can be done by legal proceedings, I have also determined that the deficiency in said assets equals or exceeds seventy per cent. of the capital stock — said bank.

You are, therefore, hereby directed at once to institute such legal proceedings in the proper court as may be necessary to enforce against each and every stockholder of said bank owning any stock thereof or any interest therein at the time of the suspension of said bank his or her personal liability as such stockholder, in accordance with the 12th section of the act of Congress entitled "An act to provide a national currency secured by a pledge of
110 United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864; to compel a present contribution from said stockholders of seventy per centum of the par value of the shares held or owned by them or wherein they had any interest, the same to be subject to further contributions to be enforced from time to time if the same shall be found to be necessary to pay the debts of said bank.

This order must be held to extend to all cases save those when, because of bankruptcy or apparent insolvency, such legal proceedings would be of no avail.

Very respectfully,

(Signed) JNO. JAY KNOX,
Comptroller of Currency.

Hon. Chas. Case, rec'r Crescent City National Bank, New Orleans, La.

111 TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY.

I certify the foregoing to be a true and complete copy of the order of assessment issued by this office April 7th, 1874, as the same appears upon the records of this office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents, at the city of Washington, in the District of Columbia, this 23d day of April, A. D. 1880.

[SEAL.] (Signed) JNO. JAY KNOX,
Comptroller of the Currency.

Document G. Order of Comptroller of Currency to Enforce Liability of Stockholders, Dated 25th July, 1874, Offered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

TREASURY DEPARTMENT,
OFFICE OF COMPTROLLER OF THE CURRENCY,
112 WASHINGTON, *July 23d*, 1874.

SIR: Having ascertained and determined that the assets of "The Crescent City National Bank of New Orleans" are insufficient to discharge the legal debts and liabilities thereof, and that in order to discharge the same it is necessary to enforce the personal liability of the individual stockholders owning shares of stock in said bank at the date of its suspension, so far as the same can be done by legal proceedings—

I have (also) determined that the deficiency in said assets equals or exceeds seventy per centum of the capital stock of said bank.

You are therefore hereby directed at once to institute such legal proceedings in the proper court as may be necessary to enforce against each and every stockholder of said bank owning any
113 stock thereof or any interest therein at the time of the suspension of said bank his or her personal liability as such stockholder, in accordance with the 12th section of the act of Congress, entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3d, 1864, to compel a present contribution from said stockholders of seventy per centum at the par value of the shares held or owned by them, or wherein they had

any interest, the same to be subscribed to further contributions to be enforced from time to time if the same shall be found to be necessary to pay the debts of said bank.

This order must be held to extend to all cases, save those where because of bankruptcy or apparent insolvency such legal proceedings would be of no avail.

In testimony whereof I have hereto affixed the official seal
114 of this office upon the day and year above mentioned.

[SEAL.] (Signed) JNO. JAY KNOX,
Comptroller of the Currency.

F. F. Case, rec'r Crescent City Nat'l Bank, New Nrleans, La.

TREASURY DEPARTMENT,
OFFICE OF THE COMPTROLLER OF THE CURRENCY.

I hereby certify the foregoing to be a true and complete copy of the order of assessment issued by this office July 3d, 1874, as the same appears upon the records of this office.

In testimony whereof I have hereto subscribed my name and caused my seal of office to be affixed to these presents at the city of Washington, in the District of Columbia, this 23d day of April, A. D. 1880.

[SEAL.] (Signed) JNO. JAY KNOX,
Comptroller of the Currency.

115 *Document "H." Receipt of Plaintiff in Execution to Lessassier & Binder in Suit No. 8616 of the U. S. C. C., Offered in Evidence by Plaintiffs. Filed 13th May*, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

CASE, Rec'r,
vs.
LESSASSIER & BINDER. } No. 8616.

NEW ORLEANS, *June 16th*, 1879.

Henry C. Miller, Esq.

DEAR SIR: The amount due by Lessassier & Binder on ac. of the judgment recovered against them by Frank F. Case, receiver of the Crescent City National Bank of New Orleans, in above case is as follows:

70% of 40 shares stock of said bank, on which judgment recovered		$2,800
Interest at 5% per annum from July 23d, 1874		682 50
Costs, viz:		
Clerk	$50 10	
Marshall	27	
Att'ys	20	
		97 10
Amount due this date		$3,579 60

116 Yours truly,
(Signed) ROUSE & GRANT, *Att'ys.*

Received, June 19th, 1879, from Messrs. Lessassier & Binder, defendants, thirty-five hundred and seventy-nine $\frac{60}{100}$ dollars in payment of judgment, interest, & costs, as per the annexed statement.
$3,579.60.

(Signed) ROUSE & GRANT, *Atty's.*

Document "I." Clerk's Bill of Costs in Suit No. 8616, *U. S. C. C., Offered in Evidence by Plaintiffs. Filed* 14*th May,* 1880.

United States Circuit Court, District of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

F. F. CASE, Receiver,
vs.
LESSASSIER & BINDER. } No. 8616.

NEW ORLEANS, *May* 13*th,* 1880.

In this case I certify that the taxed costs of clerk amount $116\frac{1}{2}$ to fifty $\frac{10}{100}$ dollars.
$50.–.

Attest: T. V. COUPLAND, *D'y Clerk.*

Received payment of the amount, fifty $\frac{10}{100}$ dollars, July 31st, 1879, this 13th day of May, 1880.

(Signed) T. V. COUPLAND, *D'y Clerk.*

Document "J." Marshal's Bill of Costs in Suit No. 8616, *U. S. C. C., Offered in Evidence by Plaintiffs. Filed* 13*th May,* 1880.

United States Circuit Court, District of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

FRANK CASE, Rec'r,
vs.
LESSASSIER & BINDER. } No. 8616.

NEW ORLEANS, *May* 13, 1880.

The marshal's costs to date, due Joel Wharton herein, amount to twenty-seven dollars.
$27.00.

(Signed) W. W. JACKSON,
D'y U. S. Marshal.

117 "Copy."

Document K. Copy of Letter of Plaintiffs to S. H. Kennedy, Dated March 11th, 1879, Oeffered in Evidence by Plaintiffs. Filed 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

NEW ORLEANS, *11th March*, 1879.

S. H. Kennedy, Esq.:

DEAR SIR: We are sued in the U. S. C. court as the owners of 40 shares of the stock of the Crescent City National Bank for the contributions claimed from the shareholders. This stock we sold you on the 24th of February, 1873, through Mr. E. C. Feinour.

We shall resist our liability, but, should our defence fail, we shall fall back on you, and hold you for whatever amount we may be compelled to pay on stock which, from the 24th February, 1873, we had ceased to own and had transferred to you.

118 If you wish to join in the defence we should be pleased to hear from you.

The case is fixed for Thursday morning next.

Very resp'fly, yours, &c.,

(Signed) LESSASSIER & BINDER.

Document "L." Check of S. H. Kennedy in Favor of E. C. Feinour, Offered in Evidence by S. H. Kennedy. Filed May 13th, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

No. 128. NEW ORLEANS, *Feb'y 24th*, 1873.

State National Bank of New Orleans, pay to the order of E. C. Feinour two thousand dollars, $2,000.00.

(Signed) S. H. KENNEDY.

Endorsed: Deposit. (Signed) E. C. Feinour.

Stamped: New Orleans National Bank.

119 "Copy."

Transfer of 40 *Shares of Crescent City National Bank, Signed by Lessassier & Binder, Dated Feb'y* 24*th*, 1873, *Offered in Evidence by Plaintiffs. Filed* 13*th May*, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

In pencil: E. C. Feinour, S. H. Kennedy, Morris Dyer.

CRESCENT CITY BANK,
NEW ORLEANS, *Feb'y* 24*th*, 1873.

For value received we do hereby assign unto Morris Dyer all our rights, title, and interest in forty shares of the capital stock of the Crescent City Bank, on which has been paid —— on each share, being ——, as described by a certificate issued to ——, numbered ——, dated ——, which certificate, by this transfer, is null and void.

(Signed) LESSASSIER & BINDER.

120 *Order and Continuance.*

Minutes 13th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This case came on this day for trial—H. C. & F. K. Miller for plaintiffs; James McConnell & G. S. Bryon for defendants—when, after hearings, pleadings, and evidence said cause was continued till to-morrow at 12 m.

Order and Continuance.

Minutes 14th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No. 9999.

This case is continued till the 19th inst. at 12 o'clock m.

Order and Continuance.

Minutes 19th May, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.* } No, 9999.

This case is continued.

121 *Testimony of E. H. Reynes, Offered in Evidence by Plaintiffs. Filed 23d June*, 1880.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *als.*
No. 9999.

Testimony taken by consent on the 28th day of May, 1880, in the above entitled and numbered cause, in the clerk's office.

E. H. REYNES sworn for plaintiffs, and examined by Mr. MILLER:

I was a banker in the city of New Orleans in the year 1873, and agent for Eugene Kelly & Co., of New York. I was very familiar with the position, standing, and credit of the Crescent City National Bank.

Q. Can you fix the date of the failure of Lizardi & Co.?

A. Lizardi & Co. failed about the middle of February, 1873, to the best of my knowledge; about that time.

Q. Were not the business relations between Lizardi & Co. & the Crescent City Bank very intimate?

122 A. Lizardi & Co., at London, were the correspondents of the Crescent City National Bank; the Crescent City National Bank were engaged in selling sterling exchange, and the Crescent City National Bank remitted to Lizardi & Co. to cover the bills drawn on them.

Q. Therefore, did not the failure of Lizardi & Co. have a natural effect upon the business and credit of the Crescent City National Bank?

A. Yes, sir.

Q. Do you recollect when the Crescent City National Bank failed and suspended payment?

A. On or about the 14 of March, 1873; that is about the time.

Q. What was the impression created amongst the business and financial people generally in reference to the failure of the bank, and the ultimate condition and failure of the bank?

A. The impression was that the entire amount of the value of the stock would be lost for the stockholders, but it was sup-
123 posed that the depositors and creditors would lose nothing—or very little.

Q. By that you mean that the stock of the bank would be entirely lost by the failure of the bank?

A. Yes, sir; that was the impression then.

Q. Was there not an impression generally prevailing in the community at that time that the shareholders would have to pay their contributions under the national banking act?

A. It turned out to be so, but is was not believed at the time that they would have to pay.

Q. The impression you speak of was general in the community?

A. I believe so.

Q. Were you in a position to know it?

A. I was in a position to know the condition of the bank before its failure.

Q. You were in a position to know what the general impression was at the time?

A. Yes, sir; I used to see the brokers come in my office fifty times a day, and I have conversed with them. I don't know of my own knowledge or experience; I was not buying or selling any stock.

124 Q. So, then, in stating what you conceived to be the impression, is based upon what was said by persons at the time, and what was said after?

A. Yes, sir.

Q. Are you familiar with the mode of transferring shares in bank?

A. Yes, sir; I am.

Q. When a sale of stock is made what is the usual mode by which the vender transfers it to the purchaser?

A. When a sale of stock is made by a broker to another broker the transfer is made in pencil, for this reason; I will explain why. The vender is not supposed to know the buyer; even the broker will not tell the other broker who the buyer of the stock is, and that is the reason why the stock is always transferred in pencil.

Q. It then rests with the purchaser after the broker buys that stock to put it in his own name when he pleases?

A. Yes, sir.

Q. And *what* is done within a reasonable time?

125 A. It is usually done *it* twenty-four hours. The rule of the exchange requires that it should be done in twenty-four hours.

Q. Isn't it the usage for a vendor of stock to sign the transfer book in blank?

A. He signs it in blank really because the transfer is made in blank, lead pencil, on the margin, indicating that the stock is to be transferred to the real purchaser.

Q. By that you mean, I suppose, that the vender of the stock signs the transfer in the transfer book of the bank?

A. I do, sir; it is always done that way.

Q. And the broker who buys the stock puts his own name on the margin?

A. The broker who buys the stock then gives to the institution or the bank the name of the real purchaser and owner of the stock.

Q. By whom is the name of the purchaser put in the margin in the transfer book?

A. It is generally done by the officer of the bank.

Q. We direct your attention to a case where the broker has bought the stock and goes to the bank for the purpose of having it transferred; now we want to know what is done.

126 A. The broker who has bought it transfer- it to the real purchaser of the stock.

Q. Well, how does he transfer it, the stock?

A. By giving to the bank the name of the purchaser, either in writing or verbally.

Q. By whom is the name of the purchaser which the broker gives to the bank put in the transfer book, in order to transfer it to the real purchaser?

A. By the officer of the bank invariably.

Q. According to that statement, then, the avocation of the broker is complete when he goes to the bank and hands to the officer of the bank the name of the real purchaser?

A. Yes, sir; and with the request to have the stock put in that name.

Q. Now, does it not sometimes occur that the broker himself who purchases the stock puts the name of the real purchaser on the margin?

A. It might be. I don't know it. I can't say anything to the contrary. I have never seen it done.

Q. Then you say that the usual mode of transferring stock would be by signing the transfer on the book of the bank?

A. Yes, sir; in the presence of the broker some time during the day.

127 Q. The same day?

A. The same day, or the day after; it depends upon the condition of the real purchaser.

Q. Has the vender of the stock anything more to do in the matter than to sign his name to the transfer in the transfer book of the bank?

A. No, sir.

Q. It then rests with the broker or the purchaser to fill up the name of the purchaser, or to have it done?

A. Yes, sir; invariably.

Q. Please look at the transfer in this case showing the signature of Lesassier & Binder, dated February 24th, 1873, to the transfer of the forty shares in controversy, and on the margin there are the names in pencil of E. C. Feinour, S. H. Kennedy, & Morris Dyer; but suppose the name of Morris Dyer to be left in blank, both in the body of the transfer and on the margin; suppose that that transfer was in that condition, with the name of Morris Dyer omitted, both on the margin on the 24 day of February, 1873, and suppose that Lesassier & Binder were the vendors of the stock through a broker, would or would not that form of transfer be in accordance with usage?

A. Yes, sir.

128 Mr. McConnell, counsel for defendant, Mr. Kennedy, come in at this time, and the testimony of the witness was read over to him.

And it is now agreed by counsel that the objections heretofore made by Mr. McConnell to the testimony of this witness and all other witnesses, without being further specified —. Mr. McConnell further specially objects to the testimony of this witness on the ground that the proof of *costum* by the witness and his testimony otherwise goes to contradict the record kept by the bank, and that the books of the bank must speak for themselves, and that the testimony of the witness showing the custom contrary to the book of

the bank and the national banking law are inadmissible, and that this objection shall also apply to any other witness that may be examined.

By Mr. BRYON: And this objection is accepted and made on the part of Mr. Bryon — behalf of the other defendant, E. C. Feinour.

By the COURT: These objections are overruled, & counsel make this exception in lieu of a bill.

129 By Mr. BRYON:

Q. According to the custom in this case, Lesassier & Binder, when they signed the transfer in the transfer book of the bank, would have ordered the officers of the bank to enter the name of E. C. Feinour on the margin?

A. That would have been the custom; I don't know personally what happened in this case, but that is according to the custom of the business.

Q. The signer in the transfer book gives the name of the broker to the bank who has purchased the stock?

A. Yes, sir; the name of the broker who purchased the stock.

Q. If Mr. Feinour was the purchaser of the stock——

A. He might for his own account or a third party; if he was acting as a broker for Mr. Lesassier it was a different thing.

Q. But he was not acting as a broker.

A. Well, he may have ordered it to be transferred to Feinour from Lesassier, not knowing, of course, the name of the real purchaser.

Q. For whom — Mr. Feinour acted?

A. For whom Mr. Feinour acted I cannot say.

130 Q. What I want to get at is, whether it was Lesassier & Binder's business to have the name entered.

A. It was the business of Lesassier and Binder to state to the bank in whose name they wanted the transfer made; that is all I can tell you.

Q. You have made a statement in regard to the usual custom in making transfers of stock of this kind; that it is usual to have it done within a day or two days?

A. No, sir; I did not say two days. I said twenty-four hours; what we call under the rules "regular;" what I buy to-day is to be transferred to-morrow.

Q. How long has that been the custom?

A. To the best of my knowledge, always.

Q. There has been no regular exchange here long, has there?

A. There was one in 1865 & 1866, called then the board of brokers; it lasted two or three years & broke up and reorganized again.

Q. Was the present exchange in existence in 1873?

A. No, sir; I believe not; no, sir; it was not.

Q. What was the penalty in case it was not done?

131 A. I don't know of any penalty at all. I never heard of any; in these things there can be no penalty; a man buys or sells stock, and it depends upon the conditions made between the

vendors and the buyers, but it is usually transferred the same day or the next.

Q. Suppose you were purchasing for a party five hundred shares of some stock and he wanted it all in one certificate and you had to purchase it in parcels, what do you do in that case?

A. I don't know what the others do. I can only speak for myself; there is no custom in regard to that. I have the name of the purchaser given in time.

Q. You buy them in parcels; suppose you were a broker and you wanted but one certificate?

A. Yes, sir; if the buyer wants but one certificate.

Q. You have his name entered on the stock-book?

A. Yes, sir.

Q. Every time?

A. Yes, sir; if it is the request of the buyer who wants but one certificate I receive in his name. I can't put in my name; it does not belong to me.

132 Q. Is that the universal custom?

A. I believe it is; I cannot swear to it; it is generally the case.

Q. Does not some of them carry the stock in their name?

A. That is a different thing; then the certificate of the stock is taken and pledged in some bank on a margin by the broker, when it is made in the broker's name, the buyer furnishing the money; the principal then is not known to the tender to whom the stock is pledged, the principal giving the broker the original.

By Mr. MILLER:

Q. When a man sells stock to a broker has he or has he not anything else to do except to sign the transfer book at the request of the broker?

A. Nothing else, to my knowledge.

S. H. Kennedy, Esq., defendant, presents himself and desires to correct his statement heretofore made, having since then examined his books:

I find, I think, in my statement I said I could not say w-ether Mr. Feinour acted as a broker or for his own account. I have found in examining my books an entry of ten dollars paid on the stock involved in this case, forty shares.

133 NOTE.—It is agreed that there shall be furnished and made part of this record the substance of the last twenty-eight entries from the transfer book, beginning from October 21, 1872, and ending March 14th, 1873, exhibiting the names of the purchasers and the names of vendors; also the number of shares transferred.

Testimony of H. A. Lesassier, Offered in Evidence by Plaintiffs. Filed 23d June, 1880.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

My firm of Lesassier & Binder sold to E. C. Feinour on the 24th of February, 1873, forty shares of the stock of the Crescent City National Bank of N. O. at the price of fifty dollars per share. My firm received payment of the price of same, say two thousand dollars, on the same day from E. C. Feinour.

The stock was transferred by my firm in the customary manner, viz., by signing the transfer in the transfer book of the bank, leaving the space intended for the name of the purchaser in blank
134 to be filled by the broker with the name of the purchaser, & putting the stock in the control of the broker purchasing, as is the custom, by writing his name in pencil on the margin of the transfer book opposite the transfer. I recognize the transfer dated 24 February, 1873, for forty shares in evidence as that executed by my firm for said stock.

Mr. Feinour was & is a well known broker, and it was expected that he would cause the name of the purchaser to be inserted in the blank left for that purpose on the same day, as is the invariable custom. The bank stopped payment of checks on the 14th of March, 1873; after that date the stock ceased to be subject to speculation or sale in the market. The impression generally prevailed that the failure of the bank would be a bad one.

My firm were largely engaged at the time in buying and selling securities, both as brokers & as principals, & I was thoroughly conversant with the appreciation in which the stock was held.

The usual mode of transferring stocks here is for the vendor to sign the transfer on the transfer book of the bank or other
135 corporation, filling the space intended for *for* the number of shares with the number of shares sold, leaving blank the space intended for the name of the purchaser, and putting the stock so transfered in the control of the broker purchasing by writing his name in pencil on the margin of the transfer book opposite the shares transferred, the broker himself filling up the space left for the name of the purchaser usually on the same day or, at most, a day or two after.

I never knew that in this case the name of the purchaser had not been filled up as usual until months after the transfer, when my firm was sued as owners of the stock.

My firm had to pay the 70 per cent. on the par value of the stock for which said suit was brought against them by the receiver. The amount of the principal, interests, & costs of the judgment against my firm in that case was $3,579.60, which we had to pay on the 19th of June, 1879.

At the time the suit was brought against my firm by the receiver we notified the defendant, who, we had learned from Mr. Feinour,

was the purchaser of the stock in question, of the institution
136 of the suit against my firm, & gave him notice at the same time that we would hold him if we were cast.

The copy marked is the copy of the letter we served on him.

(Signed) H. A. LESASSIER.

New Orleans, 26th May, 1880.

Jurat waived.

(Signed) J. McCONNELL.

Extract from Transfer Book of the Crescent City National Bank from 21st October, 1872, to March 14th, 1873 (as per Agreement on page 96).

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

NEW ORLEANS, *Oct.* 21*st*, 1872.

Purchaser.	Vendor.	No. of shares.
E. H. Summers	Jno. G. Gaines, pres.	100 shares.
	New Orleans, January 10th, 1873.	
Geo. G. Wolf & Levi	L. Navra	50 shares.
137	New Orleans, February 14th, 1873.	
J. Nelson	Moore, Janny & Hyams	60 shares.
	New Orleans, February 17th, 1873.	
J. Muse Todd	J. Nelson	60 shares.
	New Orleans, Feb'y 20th, 1873.	
Lessassier & Binder	S. M. Todd	10 shares.
	New Orleans, February 20th, 1873.	
W. Norcom	S. M. Todd	20 shares.
	New Orleans, February 20th, 1873.	
Lesassier & Binder	S. M. Todd	30 shares.
	New Orleans, March 8th, 1873.	
H. O. Seixas	Behan, Thorn & Co.	10 shares.
	New Orleans, March 8th, 1873.	
B. F. Leefe	G. W. Hynson	100 shares.
	New Orleans, Feb. 24th, 1883.	
Morris Dyer	Lessassier & Binder	40 shares.
	New Orleans, March 8th, 1873.	
George McCaughan	C. M. Soria	100 shares.
138	New Orleans, March 10th, 1873.	
N. E. Hynson	G. W. Hynson	50 shares.

Purchaser.	Vendor.	No. of shares.
	New Orleans, March 10th, 1873.	
P. H. Keenan	L. H. Gardner & Co.	50 shares.
	New Orleans, March 10th, 1873.	
Murray, Schroder & Co.	George McCaughan	56 shares.
	New Orleans, March 10th, 1873.	
Miss E. M. Small	P. H. Keenan	50 shares.
	New Orleans, March 10th, 1873.	
Germania Nat'l Bank of N. O.	Phelps, McCullock & Co.	76 shares.
	New Orleans, March 10th, 1873.	
W. A. Waldow	Germania Nat'l Bank	76 shares.
	New Orleans, March 11th, 1873.	
Hoppenheimer	Katz & Barnett	25 shares.
	New Orleans, March 12th, 1873.	
Julius Fox	Aleus, Schenck & Auty	50 shares.
139	New Orleans, March 12th, 1873.	
Joseph Doane	E. A. Palfrey, sec't'y	25 shares.
	New Orleans, March 13th, 1873.	
George J. Vincent	B. J. West	50 shares.
	New Orleans, March 13th, 1873.	
Fred. W. Parham	N. C. Hynson	50 shares.
	New Orleans, March 14th, 1873.	
Edward Lubic	P. H. Keenan	100 shares.
	New Orleans, March 14th, 1873.	
William Marshall	H. O. Seixas	10 shares.
	New Orleans, March 14th, 1873.	
Geo. McCaughan	C. M. Soria	50 shares.
	New Orleans, March 14th, 1873.	
B. Davis	Geo. G. Wolf & Levi	50 shares.

140 *Testimony of J. M. Seixas, Offered in Evidence by Plaintiffs. Filed June 23d, 1880.*

5th Dist. Court.

LESASSIER & BINDER
vs.
SAM'L H. KENNEDY *et als.* } No. 9999.

James M. Seixas states that he is a broker in New Orleans and has been for years. He has dealt in stock largely.

When stocks are sold they are usually transferred, either by the owner and seller executing a power of transfer bearing the name of the transferree in blank, which he delivers to the broker of the corporation — is usually made by the broker's buyer to his principal, or another mode is for the seller of the stock to sign the transfer book in blank, leaving the buyer to have his name inserted.

I have bought unsold shares in national banks. The actual sales of said stock on the market ceases with the failure of the bank — ruin, to the liability of shareholders for any deficit. It naturally deters purchasers from buying. Impending failure, if suspected, has the same effect in the stock.

When the Crescent City National Bank failed the impres-
141 sion was general that it was a bad failure.

(Signed) J. M. SEIXAS.

Jurat waived.
(Signed) J. McCONNELL.

Testimony of Henry V. Ogden, Offered in Evidence by Plaintiffs. Filed June 23d, 1880.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

I know Morris Dyer; knew him in 1873. He was irresponsible and possessed of no means. He was at that time a porter in the office of the Crescent Mutual Insurance Company at $40 per month. He is a colored man. Mr. Adams was president of the Crescent Mutual Insurance Company at that time.

(Signed) HENRY V. OGDEN.

Jurat waived.
(Signed) J. McCONNELL.

142 *Testimony of Chas. L. Uhlhorn, Esq., Offered in Evidence by Plaintiffs. Filed June 23d, 1880.*

CHAS. UHLHORN, sworn for plaintiffs and examined by Mr. MILLER.

Q. What is your occupation?

A. I am one of the book-keepers of the Crescent Mutual Insurance Company, and have been for some years.

Q. Did you know Morris Dyer?

A. Yes, sir; he was the porter of the Crescent Mutual Insurance Company; he was a colored man.

Q. His occupation had been for some years that of porter of the company?

A. Yes, sir; porter.

Q. He was getting a salary, I suppose?

A. He was getting a salary of fifty dollars per month.

Q. His salary was his only means of support?

A. Yes, sir.

Q. Was he a man of any means?

A. Not a dollar outside of his salary.

Q. You had known him for years as a colored porter?

143 A. Yes, sir; as a colored man, for some years; he used to be one time porter of one of the clubs; his occupation has always been that of a waiter & porter.

Q. The Crescent Mutual Insurance Co. was the holder of some Crescent City National Bank stock at the time of the Crescent City National Bank?

A. Yes, sir; about one hundred and twenty shares, on which they paid something like ten thousand dollars, being an assessment, costs, & attorneys' fees made by the Controller of the Currency in consequence of the failure of the Crescent City National Bank. The Crescent Mutual Ins. Co. held the stock at the time of the failure of the bank and attempted to hold it and never transferred it, and owing to that it had to pay the assessment. The amount paid by the Crescent Mutual Ins. Co. was an assessment made by the Controller of the Currency on the shareholders of the bank to pay the

144 debts of the bank. The amount paid by the Crescent Mutual Insurance Co. was an amount on a judgment rendered by the circuit court of the United States against the Crescent Mutual Insurance Company.

Q. Did you ever know of Morris Dyer buying any bank stock?

A. Never, sir.

Q. Was there any talk in the Crescent Mutual Insurance Company about 40 shares of the Crescent City National Bank or any stock being put in his name?

A. Only what Morris Dyer said himself.

Q. Did he speak of it seriously or in a joking way?

A. He spoke of it misteriously, as I understood it.

Q. Can you recall what he said about it?

A. My only information — that I got from Morris Dyer himself. He received an annonimous letter, one full of jocularity, asking him when he purchased the stock, how he came by it, and if he had any more for sale, and he could not read it.

Q. What did Morris Dyer *said* about it?

145 A. He asked me what it meant, and I told him I did not know; that I was as much in the dark as he was about it, and that I supposed he ought to know his own business.

Q. Was this after the failure of the Crescent City National Bank?

A. My memory is bad, but I am under the impression that it

was after; the letter conveyed that impression because the anonimous letter stated something about the failure of the bank; it alluded to it.

Witness wishes to state the purport of the letter.

I desire to state the purport of that letter. It was one of jocularity and making him a butt for ridicule.

Q. With reference to his owning or having any bank stock in Mr. Sumners' bank, did the letter allude particularly to these 40 shares?

A. No, sir; amongst his other qualifications, he was a colored preacher who could not read the Bible.

By Mr. McConnell: All the above testimony from middle
146 of page 4, beginning with the words "Q. Was there any talk in the Crescent Mutual Insurance Co. about 40 shares, &c., &c., &c.," to the end of the testimony on page 7, objected to as hearsay and not the best evidence; conversations of third persons out of the defendants' presence irrelevent, &c.

(Signed) J. McCONNELL, *Att'y.*

These objections are sustained & the exception noted in lieu of a bill by counsel for plaintiffs.

Testimony of E. C. Feinour, Offered in Evidence by Plaintiffs. Filed June 23d, 1880.

Lesassier & Binder
vs.
S. H. Kennedy & *al.*
} No. 9999.

Testimony of E. C. Feinour, one of the defendants, taken on behalf of the plaintiffs and of himself.

He saith that he is a stock and bond broker. I have been, he says, doing business in New Orleans since the year 1868. I
147 belong to the stock exchange of New Orleans. I was one of the founders of it; it was founded in 1875, on or about the 24th of February, 1873. I purchased from S. H. Kennedy the 40 shares of Crescent City National Bank's stock involved in this suit. It was bought on his order at $50 per share, for which he gave me his check for $2,000; he, Kennedy, also gave me at same time, in cash, ($10.00) ten dollars, the same being the amount of my brokerage fees at twenty-five cents per share. I paid to Lesassier & Binder the $2,000.00 received of Kennedy in my check on the same day I received it. These $10.00 brokerage fees was all the interest I had in said 40 shares of stock. Mr. Kennedy directed me to let the stock stand in my name, as it has been transferred on the transfer book of the bank by Lesassier & Binder for a day or two, when he would tell me how to transfer it accordingly in a few days, not over 4 or 5.

He directed me to have the stock entered in his name in
148 pencil on the transfer book of the bank; I had it so entered. When this was done my duty as a broker was accom-

plished, and from that time I have nothing further to do with the transaction. Being asked what is the duty of the seller and what — duty of the broker to the seller in a case like the one at bar: The duty of the party selling bank or other stocks to the broker is to transfer the stocks on the transfer books, either in ink or in pencil, to the broker, and than when that is done to the satisfaction of the broker it is the duty of the broker to pay the seller for the stock, and when he has done that his obligations to the seller ceases; he is not in the employ of the seller; he is in the employ of the buyer, who pays him for his professional services, and he does whatever his patron tells him to do with the stock. He can direct the broker to transfer it to him in pencil or in ink, or to divide the number of shares among several persons, or he may direct the broker to hold the stock a day or two or several days, until
149 he decides how to have it transferred, and no broker, except in an extraordinary state of affairs, would refuse to act in any of the above ways.

Being asked what was the condition of the bank at the time of this transaction: A. The bank was not believed to be in a failing condition; the stock had declined to $50 per share, not from any act of insolvency of the bank, but because of the failure of Lizardi & Co., London, who were doing business with the bank, and believed to — considerable debtors of it.

Being questioned further by plaintiffs in regard to what took place between them on the sale of the stock, says: They sold me the stock, and they themselves, Lesassier & Binder, notified me the stock was transferred. I did not know whether they were acting as brokers or dealers in the matter. I did not see the transfer book, but on their verbal statement that the stock was transferred to me in pencil paid them; did not know who signed the transfer
150 book. I did not look at the book, but accepted the statement of the bank official that the stock was transferred. On my verbal statement to Kennedy that the stock was transferred he paid me the $2,000 and my brokerage. I did not mention to him the name of the party I had bought the stock from, it not being customary.

(Signed) E. C. FEINOUR.

Cross-examined by Mr. McConnell:

The attention of the witness being called to the statement made by him in his examination-in-chief, — as follows:

Mr. Kennedy directed me to let the stock stand in my name, as it had been transferred on the transfer book by Lesassier & Binder for a day or two; and is asked whether, after the lapse of seven years, he can recall these facts so as to swear positively to them as stated by him: Answers. No; I cannot be positive; my memory is not vivid as to the details, but my impression is as I have stated them to be.

(Signed) E. C. FEINOUR.

151 *Testimony of Thomas A. Adams, Offered in Evidence by Plaintiffs. Filed June 23d,* 1880.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

Questions to be answered by Mr. Thomas A. Adams.

1st. Did you not, on or about the 15th of March, 1873, purchase the forty shares of stock of the Crescent City National Bank in question in this suit from Mr. S. H. Kennedy, the defendant, for the price of eleven dollars per share?

—. Did you not on the same day pay him for the same the sum of four hundred & forty dollars & direct that the stock thus purchased by you be put in the name of Morris Dyer?

A. Yes; I did.
(Signed) THOS. A. ADAMS.

Jurat waived.
(Signed) HENRY C. MILLER.

Admissions & Agreement.

5th Dist. C't.

LESASSIER & BINDER
vs.
S. H. KENNEDY *et al.* } No. 9999.

152 It is admitted that on the 1st of August, 1874, a bill in equity was filed in the U. S. circuit court sitting in the city of New Orleans, No. 7261, entitled F. F. Case *vs.* Henry Abraham & *als.*, in which the defendant, S. H. Kennedy, was sued as a shareholder of the said Crescent City National Bank, and as such cited to pay 70% of the 40 shares of stock referred to and described in the petition herein; that the said defendant Kennedy made answer & answered interrogatories as per copy of same herewith filed, marked "A;" that testimony was taken on said issue, the cause tried, and judgment rendered in favor of said Kennedy; that a rehearing was had and final judgment rendered in favor of said Kennedy on the 2d of June, 1876.

It is further admitted that subsequently, to wit, on the — day of ——, said plaintiffs, Lesassier & Binder, were sued in the same court by the same receiver for the same cause of action, and on the — day of —— final judgment was rendered against said plaintiffs & in favor of said receiver as shareholders of said stock for the said assessment of 70%, amounting to —.

153 It is further agreed that the printed by-laws and articles of associations of the said Crescent City National Bank, or any article thereof, as the same existed in print in 1873, may be used & referred to without being copied into the record as evidence.

It is further agreed that either party may furnish in evidence any portion of the said record No. 7261, to be furnished hereafter.

The records referred to are in evidence, and subject to said records in so far, if at all, they modify.

Order Case Submitted.

Extract from the Minutes of June 23d, 1880.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

This cause was taken up this day for trial, all parties herein represented, when, after hearing evidence and counsel, said cause being submitted, the court took the same under advisement.

154 *Reasons for Judgment. Filed July 1st*, 1880.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY *et al.* } No. 9999.

Counsel for plaintiff contends that the sale of the 40 shares of stock on Feb'y 24, 1873, was perfect between the parties. I think this proposition is clearly correct, for the price was paid and the stock delivered to defendant. The delivery was so perfect that defendant himself at a subsequent date sold to a third party.

The facts of this case show that on the 24th of February, 1873, plaintiffs sold to defendant, through E. C. Feinour, a broker, 40 shares of the Crescent City National *National* Bank stocks; that the transfer was signed in blank by plaintiffs on the books; that the broker who made the sale wrote the name of defendant on the margin of the transfer book in pencil.

On the 15th March defendant sold to Thomas A. Adams, but, at the request of Adams, made a regular transfer in due form on the book to one Morris Dyer, who was a coll*e*red porter in the Crescent Mutual Insurance office, of which Mr. Adams was then president, a
155 person entirely irresponsible. Defendant, according to the evidence, knew Morris Dyer.

There is no question that as to the receiver of the bank Lesassier & Binder were liable to the assessment demanded by the Comptroller of the Currency, and so the U. S. court decided—therefore very properly holding that Kennedy could not be prosecuted as a stockholder under the circumstances.

It, of course, must be understood that one of the causes for liability on the part of Lesassier & Binder resulted from the irresponsible character of Dyer, whose name appeared as the owner of these shares of stock.

Lesassier & Binder, having paid the judgment rendered against them for an assessment on these 40 shares of stock, bring this action to recover the amount from the defendant-. It is very true, as defendants' counsel urges, that no liability arose under the national banking act until the failure of the bank on the 17th day of March, 1873, and that at that date Morris Dyer was the stockholder, so far as the registry book shows; but, as he was totally irresponsible, his record as a stockholder was disregarded. He became a stockholder, it is true, by request of Mr. Adams, but without Mr. Kennedy's
156 act of delivery and certification he would not have appeared on the books as the owner of these 40 shares and as transferee of Lesassier & Binder, for in the blank space of the transfer signed by these plaintiffs when they sold on February 24th the defendant filled in the name of Morris Dyer.

There is no doubt of the reality of the transaction between these parties.

The purchases were made for purposes of speculation, and it was chosen for matters of convenience that the books of the bank should show the usual loose & ordinary transfer in blank and pencil memoranda on the margin.

Certainly such a condition of fact would not answer the requirements of the national banking law, and such a transfer would be inoperative as to the execution of that law, but most certainly as between the parties the contract of sale was complete. The obligation of the vender is to deliver the thing sold, and a corresponding obligation is imposed upon the vendee to accept. The effect of delivery is a complete divestiture; the consequences of acceptance is complete dominion. Complete dominion cannot exist without the burdens and perils incident to its fullest exercise.
157 Can a person be said to have, perfectly & in good faith, sold to another property about which sale there is no dispute and still be held, as to that person, to have reserved unto himself all the perils of ownership & divested himself only of the advantages and profits of the thing sold? Would same person enter upon such transactions? I think not. I have been referred to several authorities on behalf of plaintiffs, and they certainly affirm the conclusion that in a contract of sale between the parties arises an indemnity—that is to say, a liability *ex contractu* arising out and incidental to the sale. Certainly this is a most equitable doctrine, and finds its confirmation in common sense and sound reasons. It is peculiarly applicable to this controversy, for the defendant in this case can invoke it against Mr. Adams, who, under a statement of the case, is certainly liable. I am aware that cases cited were not rendered with reference to the national banking law, but we are not now dealing with that law with reference to the liabilities of stockholders, but rather seeking to give full effect to dealings between man and man.
158 Here it is frankly conceded that there is no desire to seek the aid of technicality, nor to clothe with doubt any particular of the transaction. With what spirit, under the sanction of law, I have sought to interprete and give effect to the cause, nature, and extent

of the contract entered into between plaintiffs & defendants on the 24th of February. I do not think that the defendant Feinour is liable under the facts; he acted as the agent of both parties, and it is virtually conceded by counsels that should — go hence. Let there be judgment in favor of plaintiffs, as prayed for, against Sam'l H. Kennedy, and as to the defendant, E. C. Feinour, let this suit be dismissed, with costs.

Judgment.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY *et al.* } No. 9999.

In this case, for the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged,
159 and decreed that there be judgment in favor of plaintiffs, Lesassier & Binder, and against the defendant, Samuel H. Kennedy, for the sum of three thousand five hundred & seventy-nine $\frac{60}{100}$ dollars, with five per cent. interest per annum thereon from July 6th, 1879, until paid, and costs of suit.

It is further adjudged & decreed that plaintiffs' suit be dismissed, with costs, as to the defendant, E. C. Feinour.

Judgment rendered July 1st, 1880.

Judgment signed July 2d, 1880.

(Signed) W. H. ROGERS, *Judge.*

Motion of Appeal. Filed July 3d, 1880.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

On motion of J. McConnell, att'y of Samuel Kennedy, one of the defendants in the above entitled and numbered cause, and on suggesting to the court that he is advised & believes that there is error to his prejudice in the judgment herein rendered on the 1st
160 day of July, 1880, and *and* signed on the 2d day of July, 1880, and that the amount of said judgment exceeds the sum of one thousand dollars, exclusive of interest, it is ordered that said Samuel H. Kennedy be allowed a suspensive appeal therefrom and herein, on giving bond with good & solvent security, according to law, in the sum of six thousand dollars, returnable to the supreme court of this State on the 1st Monday of November, 1880.

Appeal Bond. Filed July 3d, 1880.

5th Dist. Court.

LESASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 9999.

Know all men by these presents that we, Sam'l H. Kennedy, as principal, and Alfred Moulton, as surety, are held and firmly bound unto Thomas Duffy, clerk of the fifth dist. court for the parish of Orleans, his successors, executors, administrators, and assigns,
161 in the sum of six thousand dollars; for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated, in the city of New Orleans, on the 3d day of July, A. D. 1880.

Whereas the above-bounden Sam'l H. Kennedy has this day filed a motion of appeal from a final judgment rendered against him in the suit of Lesassier & Binder *vs.* Sam'l H. Kennedy & *al.*, No. 9999, in the 5th dist. court for the parish of Orleans, on the 1st day of July, 1880, and signed on the 2d day of July, 1880:

Now, the condition of the above obligation is such that the above-bound Samuel H. Kennedy shall prosecute his appeal and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the process of the sale of his estate, real or personal, if he be cast in the appeal; otherwise that the said Alfred Moulton be liable in his place.

(Signed) SAM'L H. KENNEDY. [SEAL.]
" ALFRED MOULTON. [SEAL.]

Signed, sealed, & delivered in the presence of—
(Signed) J. E. JANAUD.

162 *Record of Suit No. 8616, U. S. Circuit Court, District of Louisiana, Offered in Evidence by Plaintiff 13th May*, 1880.

Petition, Filed December 28th, 1878.

FRANK F. CASE, Receiver of the Crescent City National Bank,
vs.
LESASSIER & BINDER.

To the hon. the judge of the United States circuit court for the 5th circuit and district of Louisiana:

The petition of Frank F. Case, a citizen of the State of Louisiana, respectfully shows that he is the receiver of the Crescent City National Bank of New Orleans, located in the city of New Orleans, in said State, being in all things duly and lawfully constituted, appointed, and qualified as such receiver under the provisions
163 of the act of Congress, approved June 3d, 1864, called the "national bank act," and of the acts amendatory thereof.

That heretofore, to wit, on or before the third day of June, 1864, the Crescent City Bank was a corporate banking institution, created and organized under the laws of the State of Louisiana, and carried on the business of banking under said laws until on or about the 15th day of February, 1872, when the said bank, by due and regular proceedings had and taken under and by authority of said act of Congress, changed its character and form of organization from a bank acting under the authority of the laws of said State to that of a national banking association, organized and acting under the authority of said act of Congress, and became and was changed and converted into a national banking association under the name and style of the Crescent City National Bank of New Orleans, and from and after said 15th day of February, 1872, carried on the business of
164 banking under the provisions of said act of Congress, and so continued to do until the fourteenth day of March, 1873, when it failed and suspended payment.

That thereupon the Comptroller of the Currency, with full, due, and lawful authority, appointed a receiver for said association, and the same was put in liquidation under the provisions of said act of Congress, and that petitioner is now the receiver thereof, as aforesaid.

That by the conversion of said Crescent City Bank into such national banking association each and every holder of the shares of the capital stock of said Crescent City Bank became a shareholder of the capital stock of said Crescent City National Bank of New Orleans to the amount of his said shares, and as such subject to the liabilities imposed by said act of Congress upon such shareholders.

That the assets and credits of said banking association are wholly insufficient to pay and discharge the debts and liabilities thereof; that it has become necessary, in order to pay and discharge
165 said debts, to enforce the liability of the several shareholders of the capital stock of said banking association as fixed by said act of Congress; that the Comptroller of the Currency, who is by law charged with that duty, has ascertained, determined, and decided that in order to pay said debts it is necessary at this time to enforce said individual liability of said shareholders, as provided by the twelfth section of said act of Congress, to the extent of seventy per centum thereof, and has accordingly, in due form of law, heretofore, to wit, on the — day of July, 1874, ordered and directed your petitioner, receiver as aforesaid, to enforce such liability against each and every shareholder of said association to the full amount of seventy per centum of the par value of the shares of stock held or owned by him at the time of the failure of said association as aforesaid.

That the capital stock of said Crescent City Bank at the time of its conversion into the Crescent City National Bank as
166 aforesaid and of said association thereafter was five hundred thousand dollars, divided into five thousand shares of the par value of one hundred dollars each.

That the commercial partnership of Lesassier & Binder, composed of Henry A. Lesassier, George Binder, and George Lesassier, all citizens of the State of Louisiana, was, on the fourteenth day of

March, 1873 (the date of the failure of said association), the owner of forty shares of the capital stock of said Crescent City National Bank then standing on the name of said firm on the books of said bank, and, therefore, became and is, and the individual members of said firm are *in solido*, liable and indebted to your petitioner, receiver as aforesaid, in the sum — twenty-eight hundred dollars, with eight per cent. interest from March 14th, 1873, for which he brings suit.

Petitioner alleges amicable demand of payment of said sum and refusal thereof by defendant.

Wherefore your petitioner prays that said commercial partnership of Lesassier and Binder and Henry A. Lesassier, George
167 Binder & George Lesassier, the individual members thereof, be cited to answer the demand and — condemned *in solido* to pay your petitioner the aforesaid sum of ($2,800) twenty-eight hundred dollars, with eight per cent. per annum interest from March 14th, 1873, until paid, and costs of suit; and your petitioner prays for general relief, and reserves the right to proceed for such further assessment as may be made upon said stock until the liability imposed by law shall be exhausted.

(Signed) ROUSE & GRANT,
Attorneys for Petitioner.

Answer. Filed January 21st, 1879.

United States Circuit Court.

FRANK F. CASE, Receiver of the Crescent City National Bank,
vs.
LESASSIER & BINDER. } No. 8616.

Now comes Lesassier & Binder, the defendants herein, and for answer to the petition of plaintiff the defendant- deny all and
168 singular the allegations in plaintiff's petition contained, except in so far as may be hereinafter admitted.

These defendants deny that on the 14th of March, 1873, the date of the failure of the Crescent City National Bank, they were the owners of forty — of the capital stock of the Crescent City National Bank, as alleged in said petition, or of any shares of said capital stock.

These defendants aver that the said forty shares of said stock, which it is averred in said petition was owned by them on the date of the failure of said association, were sold by these defendants prior to the date of the failure of said association *were sold by these defendants prior to the date of the failure of said association*, to wit, on the 24th of February, 1873, to Samuel H. Kennedy; that the price of said shares *were* then paid by him; that the transfer of said shares on the books of the bank *being* then made by these defendants at his request and direction, and that the sale was consummated, the sale being effected, for and on account of said Kennedy, by E. C. Feinour, duly authorized by him, said Kennedy, to make said purchase; and from said date, 24th of February,
169 1873, these defendants ceased to be owners of said stock.

And these defendants show that from and after said 24th of February, 1873, said Kennedy, being in possession and having control of said forty shares of stock as owner, and being clothed with the complete title thereto, exercised entire dominion and control over said shares sold to him, was recognized as owner of said shares by said association and by all, and on or about the 15th of March, 1873, said Kennedy, as owner, sold said stock, received the price, and caused and directed the transfer to be made on the books of the bank to his vendee.

And these defendants deny that they are liable in any manner or form to the plaintiff, and they pray for judgment in their favor with costs and for general relief.

(Signed) HENRY C. MILLER,
Att'y for Def't-.

170 *Verdict of Jury on Petition.*

We, the jury, find verdict in favor of plaintiff and against the defendants for $2,800, with 5% interest from July 23, 1874.

March 24th, 1879.

(Signed) C. W. MITTENBERGR, *Foreman.*

Judgment.

FRANK C. CASE, Receiver,
vs.
LESASSIER & BINDER. } No. 8616.

By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, & decreed that Frank F. Case, receiver of the Crescent City National Bank of New Orleans, do have & recover of the defendants, the commercial partnership of Lesassier & Binder, and of George Lesassier, Henry N. Lessassier, and George Binder, the individual members thereof, *in solido* the sum of twenty-eight hundred dollars, with five per cent. per annum
171 interest from 23d of July, 1874, until paid, & cost of suit.

Judgment rendered March 24, 1879.

Judgment signed May 16th, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

Record in Suit No. 7261, *U. S. Circuit Court, Offered in Evidence by Defendant, S. H. Kennedy.*

Bill. Filed August 1st, 1874.

UNITED STATES OF AMERICA, *District of Louisiana:*

FRANK F. CASE, Receiver of the Crescent City National Bank of New Orleans,
vs.
HENRY ABRAHAM & *al.* } In B'k't'y.

To the honorable the judges of the circuit court of the United States for the district of Louisiana:

Frank F. Case, of the city of New Orleans and a citizen of the State of Louisiana, receiver of the Crescent City National Bank

of New Orleans, located in the State of Louisiana, being
172 in all things duly and lawfully constituted, appointed, and qualified as such receiver under and by virtue of the provisions of an act of the Congress of the said United States of America entitled "An act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, and of the acts of Congress amendatory thereof, brings this his bill in his said capacity and character against Henry Abraham; Mrs. H. Adler, *femme sole;* James Barnwell, Jesse K. Belle, Theodore Briere; Mrs. Jame Bogart, widow; Cicero Brown, Boyd R. Rauthgate, Mrs. N. W. Burbridge; the commercial partnership of Behan, Thorn & Co., composed of W. J. Behan, John Thorn, R. J. Buckner, Emory Clapp, M. W. Cabel; the Crescent Mutual Insurance Company, a corporation established and existing under and by virtue of the laws of the State of Louisiana, located at and doing business in the city of New Orleans; L. N. Baquie; the commercial partnership of Alcus,
173 Scherck & Antey, composed of Lewis Alcus, Isaac Scherck, and S. D. Antey, domiciled in the city of New Orleans; Miss Margaret A. Cooley, W. A. Cromwell; the commercial partnership of Cobb, Dollunde & Co., composed of John D. Cobb and Forrester Dollunde and domiciled in city of New Orleans; Thomas J. Cooley; the commercial partnership of Cohn & Seligman, domiciled in city of N. O.; William P. Ellison, Samuel Friedlander, Placide Forstall; C. H. Foster & Co., a commercial partnership, composed of C. H. Foster and W. J. Rice, domiciled in the city of N. O.; Richard Flower, George Graham, William Gregory; Mrs. D. Goodman, widow; the commercial partnership of E. J. Hart & Co., composed of E. J. Hart and B. B. Hart; M. Hirsch, E. B. Hogan, George W. Hynson, L. H. Gardner; the Germania National Bank of New Orleans, a corporation established and existing under and by virtue of the laws of the United States and located at the city of New Orleans; the commercial partnership of Katz & Barnett, composed of
174 Sigmund Katz, Jacob Katz, Nathaniel Barnett, and Selim Barnett, domiciled in city of N. O.; S. H. Kennedy, H. M. Kleine, Francois Lacoise; the commercial partnership of Lehman, Abraham & Co, composed of Emanuel Lehman, Meyer Lehman, Henry Abraham, and Henry Bier, domiciled in city of New Orleans; Gabriel Leaumont, A. Levi, W. C. Lipscomb, Jame- McConnell, Wm. H. McClellan, James McWilliams, John McIntosh, Aden McClellan; A. M. Race, tutor of the minor Sumpter M. Speake; A. McRae, tutor of the minor Mary J. Speake; H. S. McComb; the commercial partnership of Mummy, Schoeder & Co., composed of Edward F. Schoeder, John Egleand, Fred. Mauvsky, James Murphy; the New Orleans Saving Institution, a corporation established and existing under and by virtue of the laws of the State of Louisiana and located in city of New Orleans; E. Newman, Richard Nugent, William Norcom, Peter O'Donnell, Mrs. Bridget O'Neil, *femme sole;* J. B. Oliver; Mrs. Mary R. Palms, widow;
174½ W. E. Pendleton, J. W. Brice; the commercial partnership of Pritchard & Beckham, composed of Richard Pritchard and

A. M. Beckham, domiciled in city of New Orleans; David Pipes; Mrs. M. A. L. Raymond and her husband, W. C. Raymond; W. G. Robinson, R. M. Sawyer, J. A. Shakespeare, A. W. Sandford, William Stevin, Andrew Steuart; the commercial partnership of Stevens & Seymour, composed of William H. Stevens & William E. Seymour, domiciled in city of New Orleans; Arthur Shieff, Charles B. Singleton; the Sun Mutual Insurance Company of New Orleans, a corporation established and existing under and by virtue of the laws of the State of Louisiana, located at the city of New Orleans; Mrs. J. Sutherlen, *femme sole;* M. Schuppert; the commercial partnership of Steuart Bros. & Co., composed — Andrew Steuart, Hugh Steuart, and Andrew D. Gwynne, domiciled in the city of New Orleans; Samuel M. Todd, T. Y. P. Trueman,
175 H. T. Vennard, Joseph Willis, C. M. Soria, H. O. Seixas, Henry Vubaben, J. J. Warren, B. Witherspoon, Elias Wolf; Mrs. Anna Maria Baker, widow; W. H. Wells, assignee in bankruptcy of T. E. Bridge; D. S. Bryan, Mrs. Widow L. Fabio, O. B. Graham, Miss Ann Heation, and Mrs. Elizabeth Samuels, the heirs in possession of the estate of the late George Heation; Mrs. Paul Juge, *fils* and her husband, Paul Juge; the commercial partnership of McNeely & Milburn, composed of W. L. McNeely and T. H. Williams, domiciled in city of New Orleans; Alfred Moulton and Raymond A. Bourk, executors of the estates of the late Anthony O'Dowd *and the late Anthony O'Dowd* and the late Thomas Sullivan, said O'Dowd and said Sullivan having formerly been connected as commercial partners under the name and style of O'Dowd & Sullivan; Arthur Olivier, Mrs. K. M. Patton, *femme sole;* Edm. Schemer, T. Soniat;
176 Mrs. Jane E. Shumway, surviving widow in community of the late Samuel A. Shumway and tutrix of his minor children, Ellen L. and Ida Shumway, J. M. Simmons, & assignee in bankruptcy of the estate of J. M. Simmons; Mrs. Henrietta Wilson and her husband, Henry Wilson, she being separated in property from her said husband; the Association for the Relief of the Jewish Widows and Orphans, already corporate, established, and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Hebrew Foreign Mission of New Orleans, already corporate, established, and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Rector, Wardens, and Vestry of Trinity Church, formerly the Church of the Holy Trinity of the city of Lafayette, already corporate, established, and existing under and by virtue of
177 the laws of the State of Louisiana, domiciled in the city of N. O.; the Touro Infirmary and Hebrew Benevolent Association of New Orleans, Louisiana, formerly known as the "Touro Infirmary," a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Touro Infirmary &c., Hebrew Benevolent Association of New Orleans, formerly known as the "Touro Infirmary," a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; the Touro Infirmary & Hebrew Benevolent Association

of New Orleans, formerly known as the "Touro Infirmary," a body corporate established and existing under and by virtue of the laws of the State of Louisiana, domiciled in the city of New Orleans; Jules Lecesne, B. Davis, Miguel Ping, & surviving partner of the firm of Ping Bros., W. S. Wheeler, B. J. West; the commercial partnership of Phelps, McCullough & Co., composed of H. J.
178 Phelps, C. G. McCullough, and E. L. Noll, all of the parish of Orleans, in the district of Louisiana. * * *

And thereupon your orator in his said character and capacity complains and says that heretofore, prior to the 1st day of Feb., A. D. 1872, the said Crescent City National Bank of New Orleans was a corporate banking institution, created and organized under the laws of the State of Louisiana in that respect and behalf made and provided and at that time in force in said State of Louisiana, and was carrying on business of banking under the authority of said State law, and was known and designated as and by the corporate name of the Crescent City Bank.

That afterwards and on or about the 15th day of February, A. D. 1872, the Crescent City Bank, by due and regular proceedings had and taken under and by authority of said act of Congress above referred to, in due form of organization—from a bank acting
179 under the authority of the State of Louisiana to that of a national banking association, organized and acting under the authority of said act of Congress above mentioned, and became and was changed and converted into a national banking association under the name and style of the Crescent City National Bank of New Orleans; and, the due and proper certificate having been made and delivered to said bank by the Comptroller of the Currency, the officer of the United States of America charged by law with that duty, said bank became and was authorized to and did commence and for some considerable time continued to carry on the business of banking as a national bank under the provisions of said act of Congress aforesaid, and the responsibility and liability of the said several officers and shareholders of the capital stock of said bank became and was fixed, established, governed, and determined by the said act of Congress the same in all respects as if said bank had been originally created and established by and under the provisions of the said law of the United States.

180 That the said bank at the time when the same was acting and existing by virtue of said State law at no time had a paid-up capital stock of five millions of dollars and a surplus of twenty per cent. on hand, and therefore the said shareholders can claim and are entitled to no exemption or exception from these several liabilities as shareholders in said Crescent City National Bank as fixed and established by the law of the United States.

And your orator further shows unto your honors that on or about the 17th day of March, A. D. 1873, said bank failed to redeem its circulating notes upon demand made, and for that and other reasons, such as the general insolvency of said bank and its inability to meet and discharge its obligations as a banking institution and its failure to comply with the provisions of the law governing national bank-

ing associations, the said Comptroller of the Currency, with full, due, and lawful authority, appointed a receiver for said bank, and the same was in due form of law put in liquidation as required by said act of Congress; that your orator is at this time such
181. receiver; that the assets and credits of said bank are wholly insufficient to pay the debts and liabilities of said bank or discharge the lawful debts due and owing by said bank to its creditors, and that it is and has become necessary in order to pay and discharge said debts to enforce the liability of the several shareholders of the capital stock of said bank as fixed in such case by said statute of the United States; that the entire capital stock of said bank consists of five hundred thousand dollars, divided into five thousand shares of the par value of one hundred dollars per share.

And your orator further shows unto your honors that, from the best information and belief of your orator, derived from an examination of the assets of said bank, and considering the doubtful solvency of a large number of the debtors of said bank, your orator believes that in order to pay and discharge all of the debts and obligations of said bank the shareholders will be severally re-
182 quired to contribute and pay at least ninety-five dollars on each and every share held and owned by them, or within five dollars of the full par value of said share, respectively.

That the said Comptroller of the Currency, who is by law charged with that duty, has determined, ascertained, and decided that it is necessary to enforce the said individual liability of the said stockholders and owners, as provided in said act of Congress and particularly by the twelfth section of said act, and has accordingly, in due form of law, ordered and directed your orator to enforce said liability against each and every of said shareholders of the capital stock of said bank to the extent of seventy per centum of the par value or seventy dollars of each and every share thereof; that in the event that the said contribution when collected shall be found insufficient to discharge all of said debts other and further contributions will be demanded and enforced against said shareholders
183 until the said debts shall be paid, or until the liability of said shareholders shall be exhausted or the time of such liability as fixed by law reached.

That all of said defendants were shareholders in the capital stock of said bank at the time of its insolvency and suspension, and still are such shareholders or the representatives of said shareholders, in the manner and to the extent as hereinafter set forth—that is to say, the said defendant, Henry Abraham, is the owner of five (5) shares; the said defendant, Mrs. H. Adler, is the owner of three (3) shares; the said defendant, James Barnwell, is the owner of two (2) shares; the said defendant, Jose Barba, is the owner of two (2) shares; the said defendant, Nehemiah Bass, is the owner of one & two-fifths ($1\frac{2}{5}$) shares; the said defendant, Jessee R. Bell, is the owner of (30) thirty shares; the said defendant, Theodore Briére, is the owner of seventeen (17) shares; the said defendant, Mrs. Jane Bogart, is the owner of three (3) shares; the said defendant, Cicero Brown,

is the owner of twenty (25) shares; the said defendant, Boyd
184 R. Southgate, is the owner of (2) shares; the said defendant, Wm. Brown, is the owner of thirty-one (31) shares; the said defendant, Mrs. V. W. Burbridge, is the owner of ten (10) shares; the said defendants, Behan, Thorn & Co., are the owners of (10) ten shares; the said defendant, R. T. Buckner, is the owner of twenty-five (25) shares; the said defendant, Emory Clapp, is the owner of one hundred & thirty shares; the said defendant, M. W. Cabel, is the owner of one & $\frac{1}{8}$ ($1\frac{1}{8}$) shares; the said defendant, the Crescent Mutual Insurance Company, is the owner of one hundred and thirty (130) shares; the said defendant, L. N. Baquie, is the owner of twenty-five (25) shares; the said defendants, Aleus, Scherck & Antey, are the owners of seventy (70) shares; the said defendant, Margaret N. Cooley, is the owner of two (2) shares; the said defendant, W. N. Cromwell, is the owner of three (3) shares; the said defendants, Cobb, Dollunde & Co., are the owners of (5) five shares; the said defendant, Thos. J. Cooley, is the owner of four (4) shares; the said defend-
185 ants, Cohn & Seligman, are the owners of ten (10) shares; the said defendant, W. P. Ellison, is the owner of ten (10) shares; the said defendant, Samuel Friedlander, is the owner of twenty-six (26) shares; the said defendant, Placide Forstall, is the owner of eighty (80) shares; the said defendants, C. H. Foster & Co., are the owners of twenty-four shares; the said defendant, Richard Flower, is the owner of thirty (30) shares; the said defendant, George Graham, is the owner of one (1) share; the said defendant, Mrs. D. Goodman, is the owner of two (2) shares; the said defendants, E. J. Hart & Co., are the owners of two (2) shares; the said defendant, M. Hirsh, is the owner of five (5) shares; the said defendant, E. B. Hogan, is the owner of one & one-fifth ($1\frac{1}{5}$) shares; the said defendant, George W. Hynson, is the owner of one hundred & sixty-one (161) shares; the said defendant, S. H. Gardner, is the owner of one hundred and fifty-six (156) shares; the said defendant, the Germania National Bank, is the owner
186 of fifty (50) shares; the said defendants, Katz & Barnett, are the owners of (30) shares; the said defendant, S. H. Kennedy, is the owner of forty (40) shares; the said defendant, H. M. Kleine, is the owner of ten (10) shares; the said defendant, François Lacroix, is the owner of twenty (20) shares; the said defendants, Lehman, Abraham & Co., are the owners of fifteen (15) shares; the said defendant, Gabriel Leaumont, is the owner of five (5) shares; the said defendant, M. Levi, is the owner of seventeen (17) shares; the said defendant, W. C. Lipscomb, is the owner of five (5) shares; the said defendant, James McConnell, is the owner of four shares; the said defendant, William H. McLellan, is the owner of twenty-four (24) shares; the said defendant, James Williams, is the owner of eighteen (18) shares; the said defendant, John McIntosh, is the owner of two (2) shares; the said defendant, Alden W. Clellan, is the owner — (6) six shares; the said defendant, A. M. Race, tutor of the minor Sumpter H. Speake, is the owner of five (5) shares;
187 A. McRae, tutor of the minor Mary J. Speake, is the owner of (5) shares; the said defendant, H. S. McComb, is the owner of two hundred and fifty (250) shares; the said defendants, Mummy,

Schroeder & Co., are the owners of fifty-six (56) shares; the said defendant, Fred. Mursky, is the owner of one (1) share; the said defendant, James Murphy, is the owner of seven (7) shares; the said defendant, the New Orleans Savings Institution, is the owner of fifty-one (51) shares; the said defendant, E. Newman, is the owner of ninety (90) shares; the said defendant, Richard Nugent, is the owner of fourteen (14) shares; the said defendant, Wm. Norcom, is the owner of twenty (20) shares; the said defendant, Peter O'Donnell, is the owner of ten (10) shares; the said defendant, Mrs. Bridget O'Neil, is the owner of one & four-fifths (1⅘) shares; the said defendant, J. B. Olivier, is the owner of (4) shares; the said defendant, Mrs. Mary R. Palms, is the owner of five (5) shares; the said defendant, W. E. Pendleton, is the owner of (3) shares; the said defendant, J.
188 W. Brice, is the owner of five (5) shares; the said defendants, Pritchard & Bickham, are the owners of seventy-five (75) shares; the said defendant, David Pipes, is the owner of twenty (20) shares; the said defendant, Mrs. M. A. L. Raymond, is the owner of two shares; the said defendant, W. G. Robinson, is the owner of (10) shares; the said defendant, R. M. Sawyer, is the owner of two (2) shares; the said defendant, J. A. Shakespeare, is the owner of twenty-seven (27) shares; the said defendant, H. W. Sandford, is the owner of ten (10) shares; the said defendant, William Steven, is the owner of ten (10) shares; the said defendant, Andrew Stuart, is the owner of five (5) shares; the said defendants, Stevens & Seynum, are the holders of thirteen (13) shares; the said defendant — is the owner of twelve (12) shares; the said defendant, Charles B. Singleton, is the owner of two (2) shares; the said defendant, Sun Mutual Insurance Company of N. O., is the owner of twelve (12) shares; the said defendant, Mrs. J. Sutherland, is the owner of three (3) shares;
189 the said defendant, M. S. Schuppert, is the owner of (one) (1) share; the said defendants, Stewart Bros. & Co., are the owners of fifty (50) shares; the said defendant, Samuel M. Todd, is the owner of two (2) shares; the said defendant, T. Y. P. Turenian, is the owner of one (1) share; the said defendant, H. T. Vennard, is the owner of five (5) shares; the said defendant, Joseph Villa, is the owner of two (2) shares; the said defendant, C. M. Soria, is the owner of one hundred (100) shares; the said defendant, Henry Vorbaben, is the owner of two (2) shares; the said defendant, J. J. Warren, is the owner of four (4) shares; the said defendant, B. Witherspoon, is the owner of twenty (20) shares; the said defendant, Elias Wolf, is the owner of three (3) shares; and the said defendant, Mrs. Anna Maria Baker, is the owner of three (3) shares; and the said defendant, W. H. Wells, assignee in bankruptcy of F. E. Bridge, is the owner of five (5) shares; and the said defendant, D. S. Bryan, is the owner of twenty-two (22)
190 shares; and the said defendant, Widow B. Fabio, is the owner of eight (8) shares; and the said defendant, O. B. Graham, is the owner of three (3) shares; and the said defendants, Miss Ann Heation and Mrs. Elizabeth Samuels, as the heirs in possession of the estate of George Heation, are the owners of thirteen (13) shares; and the said defendant, Mrs. Paul Juge, *fils*, is the owner of twelve (12) shares; and the said defendants, McNeely & Mibburn, are the

owners of ten (10) shares; and the said defendants, Alfred Moulton and Raymond M. Bourk, executors of the estates of Anthony O. Dowd and Thomas Sullivan, are the owners of two (2) shares; and the said defendant, Arthur Olivier, is the owner of five (5) shares; and the said defendant, Mrs. R. M. Patten, is the owner of six (6) shares; and the said defendant, Ed. Schemeer, is the owner of three (3) shares; and the said —, T. Soniat, is the owner of four-fifths (4/5) of a share; and the said defendant, Mrs. Jane E. Shumway, surviving widow in community of the late Samuel A. Shumway, *tithes* of his minor children, is the owner
191 of ten (10) shares; and the said defendant, assignee in bankruptcy of the estate of T. M. Simmons, is the owner of fifty (50) shares; and the said defendant, Mrs. Henrietta Wilson, wife of Henry Wilson, is the owner of two (2) shares; and the said defendant, the Association for the Relief of Jewish Widows & Orphans, is the owner of two (2) shares; and the said defendant corporation, the Hebrew Foreign Mission of New Orleans, is the owner of fifteen (15) shares; and the said defendant corporation, the Rector, Wardens, & Vestry of Trinity Church, is the owner of six (6) shares; and the said defendant corporation, the Touro Infirmary and Hebrew Benevolent Association of New Orleans, is the owner of ten (10) shares; the said defendant, the Touro Infirmary and Hebrew Benevolent Association of New Orleans, is the owner of ten (10) shares; the said defendant, Jules Lecesne, is the owner of (10) ten shares; the said defendant, B. Davis, is the owner of fifty (50) shares; and
192 the said defendant, Miguel Ping, surviving partner of the late firm of Ping Bros., & the said firm are the owners of one (1) share; and the said defendants, Phelps, McCullough & Co., are the owners of fifty (50) shares; and the said defendant, W. S. Wheeler, is the owner of forty (40) shares; and the said defendant, B. J. West, is the owner of fifty-eight (58) shares.

And your orator further shows unto your honors that due demand for the payment of said sum of money so due from each of said defendants' shareholders has been made, and that said defendants have as yet wholly failed and neglected to pay the same or any part thereof.

To the end, therefore, that all the said above-named defendants, and any and all of said confederates when discovered, may, upon their several and respective corporal oaths, full, true, and direct and perfect answers make to all and singular the matters hereinbefore stated and charged as fully and particularly as if the
193 same were hereinafter repeated and they, severally, thereunto interrogated, and that not only to the best of their respective knowledge — remembrance, but also to the very best of their several and respective information, hearing, and belief, and more especially that they may such answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say—

First. Whether you at any time owned any share or shares in the capital stock of the late Crescent City Bank. If yea, what was the par value of such share or shares? How many shares did you own?

When did you acquire the same, and what deposition did you make thereof, and were the said share or shares converted into stock in or of the said Crescent City National Bank of New Orleans or any other national bank?

194 Second. Whether you at any time have owned any share or shares in the capital stock of the said Crescent City National Bank of New Orleans. If yea, when and how did you acquire the same? Do you hold or own the same now? Did you hold or own the same at the day and date such bank suspended payment and banking operation or at the day and date when the affairs of said bank were placed in the hands of the receiver?

Third. Whether you have in any way sold or otherwise disposed of any share or shares of the capital stock of said Crescent City National Bank of New Orleans. If yea, state the day and date of such sale or transfer and the person or persons or corporation to whom the same was or were transferred, the name, color, age, and occupation of the person or persons to whom you sold or transferred such stock, and the actual price or consideration which you re-

195 ceived for such transfer of such stock, and whether you paid or have offered any such transferee any money or other valuable promise or consideration to induce such transferee to accept such stock.

Fourth. Whether you did not, in transferring such stock, do so with the intent thereby to escape liability to *the* called upon under the provisions of the act of Congress authorizing the establishment of national banks (referred to in this bill) to contribute to the payment of the debts and obligations due by said bank.

And your orator further prays that said defendants and each of them may come to a just and fair account, and that your honors will, after due proceedings had, adjudge and decree in form interlocutory that the said defendants, and each for himself or for themselves in case of any joint ownership, pay unto your orator in his said official capacity of receiver as aforesaid the said sum of seventy per centum of the par value thereof, or seventy dollars for and

196 upon each and every of the shares of said capital stock of said bank owned by said defendants, respectively, and at the time when their respective liability to such contribution became and was fixed by the insolvency of said bank, without regard to any pretended transfers of such stock which they may have pretended to make, *after such stock which they may have pretended to make*, after such insolvency and such liability had accrued, and that after the said amount which *of* said stockholders are required at the present time by said order, direction, and decision of the said Controller of the Currency to contribute shall in due and proper form have been computed, established, and determined in respect of each of said defendant- by reference to one of the masters in chancery of this court or otherwise as the court shall determine and order, and a decree against the said several defendants decreeing them to pay the sum which they are at the time and by the present action of said Controller of Currency required to pay shall have been made and entered.

197 That your honors, in order to save further costs, expenses, and delay, do further order and decree that complainant's bill stand over and be retained, so that in the event that said contribution, so at the time required by the said action of said Controller, shall be found to be insufficient to discharge all of the debts and obligations of said bank due to its creditors, and a further contribution from the said shareholders of said bank, by reason of their liability as shareholders of the capital stock, shall become necessary and shall be required by the further decision and action of said Controller; that, upon such fact being in due form made to appear to the court, another and further decree or decrees for other and further contribution or contributions may be made in the cause without the expense and delay of a new bill of complaint and new proceedings to enforce and collect the same, and that this bill may and shall stand until sufficient money shall have been realized to pay
198 or discharge all the debts of said defendants as such shareholders shall have been exhausted; and may it please your honors to grant unto your orator such other and further relief as to your honors shall seem meet and just and the nature of the case shall require.

And may it please your honors to grant unto your orator the most gracious writ of subpœna, directed to each, all, and every of the said defendants named in the bill of complaint the same in all respects as if each several defendant had been again named, and his or the several name, names, or capacity had been written and repeated in this prayer (the same being omitted *have* to save costs and expense), and their several confederates, when discovered, thereby commanding them, and every one of them, under a certain form therein to be specific, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises and stand to, perform, and abide such order and de-
199 cree therein as your honors shall seem meet and just; and your orator shall ever pray, &c.

(Signed) J. R. BECKWITH,
" J. D. ROUSE,
Sol'tor- for Compl't.

J. R. BECKWITH, *Counsel.*

NOTE.—Each and all of the defendants named in the foregoing bill of complaint are severally required to answer the interrogatories therein, numbered first, second, third and fourth.

(Signed) J. R. BECKWITH,
Counsel & Solicitor for Comp't.

Answer in case No. 7261, U. S. C. court, copied on pages 13 to 20.

200 *Decree, Offered in Evidence by Defendant*, 1880.

Circuit Court of the United States, District of Louisiana. In Equity.

FRANK F. CASE, Receiver of the Crescent City National Bank of New Orleans, Complainant,
vs.
HENRY ABRAHAM and Others, Defendants. } No. 7261.

Decree against twenty-three of the defendants.

The said complainant, Frank F. Case, in his character of receiver of the said Crescent City National Bank of New Orleans, having, on the said 1st day of August, A. D. 1874, filed and exhibited his said bill of complaint in this cause against the said defendants named therein, and due process of subpœna herein having been issued and served, and each and all of the said defendants whose names are hereinafter set forth, and each of said defendants, having made default herein, and a decree *pro confesso* as to each of the said
201 persons, for want of appearance, answer, or demurrer to said bill of complaint, having been entered in this cause in due form at a former term of this court, and the same having in no manner been vacated, modified, or set aside, but being now in full force and effect against each and all of said persons hereinafter named:

Now, therefore, on motion of said solicitor for said complainant of record, it is ordered, adjudged, and decreed that said bill of complaint and each, every, and all of the statements and allegations in said bill of complaint, in so far as the same relate to and effect every, each, and all of the said persons hereinafter named, be and stand as confessed and acknowledged against each and all of said persons hereinafter named.

And the court considering that the said allegations and statements in said bill of complaint contained and set forth, and considering that the said complainant is the duly appointed and qualified receiver of the said Crescent City National Bank of New
202 Orleans, with the powers and duties conferred on him by law, and further considering that the said Crescent City National Bank on or about the 17th day of March, A. D. 1873, became and was insolvent and unable to redeem its circulation by reason of the general insolvency of said bank, wherefore said complainant was appointed receiver as aforesaid; and further considering that the Controller of Currency, by law charged with that duty, before the bill herein was filed had determined that in order to pay and discharge the debts due by said bank it had become and was and is necessary to enforce the liability of the individual stock or shareholders in said bank, as provided by law, and had directed said complainant to proceed to enforce against the said individual shareholders the payment of seventy per centum of the par value of the shares owned and held by such shareholders individually; and further considering that said share- of the capital stock of said

bank are of the denominations and par value of one hundred
203 dollars each, and considering that the shares of said stock held by each of said defendants so decreed to be in default, together with the amount for which they severally are required to account, or seventy per centum or seventy dollars per share, is as follows:

Arthur Olivier, five shares, upon which there is due three hundred and fifty dollars.

M. Schuppert, one share, upon which there is due seventy dollars.

Mrs. Jane Bogart, three shares, upon which there is due two hundred and ten dollars.

Cohn — Seligman, ten shares, upon which there is due seven hundred dollars.

W. E. Pendleton, three shares, upon which there is due two hundred and ten dollars.

James Barnwell, two shares, upon which there is due one hundred & forty dollars.

Cobb, Dollunde & Co., five shares, upon which there is due three hundred and fifty dollars.

Mrs. D. Goodman, two shares, upon which there is due one hundred & forty dollars.

Thomas J. Cooley, four shares, upon which there is due two hundred and eighty dollars.

204 Jesse K. Bell, thirty shares, upon which there is due twenty-one hundred dollars.

Behan, Thorn & Co., ten shares, upon which *the* is due seven hundred dollars.

C. H. Foster & Co., twenty-four shares, upon which there is due sixteen hundred and eighty dollars.

William Gregory, one share, upon which there is due seventy dollars.

E. B. Hogan, one and one-fifth share, upon which there is due eighty-four dollars.

François Lacroix, twenty shares, upon which there is due fourteen hundred dollars.

John McIntosh, two shares, upon which there is due one hundred and forty dollars.

T. Y. P. Trueman, one share, upon which there is due seventy dollars.

Mrs. Mary R. Palms, five shares, upon which there is due three hundred and fifty dollars.

A. T. Vennard, five shares, upon which there is due three hundred and fifty dollars.

J. J. Warren, four shares, upon which there is due two hundred and fifty dollars.

Association for Relief of Jewish Widow- & Orphans, two
205 shares, upon which there is due one hundred and forty dollars.

Touro Infirmary and Hebrew Benevolent Association, ten shares, upon which there is due seven hundred dollars.

Percy Roberts, assignee of Thomas M. Simms, bankrupt, fifty shares, upon which there is due thirty-five hundred dollars.

And thereupon, the court considering the premises and the law, it is ordered, adjudged, and decreed that the said above-mentioned defendants do account to and pay over to the said Frank F. Case, receiver as aforesaid, in his said capacity as aforesaid, or to his successors in*d* said capacity, respectively, the following amounts in money:

The said defendant, Arthur Olivier, the full sum of three hundred and fifty dollars.

The said defendant, M. Shuppert, seventy dollars.

The said defendant, Jane Bogart, two hundred and ten dollars.

The said defendants, the commercial firm and copartnership of Cohn & Seligman, domiciled in New Orleans, seven hundred dollars.

206 The said defendant, W. E. Pendleton, two hundred and ten dollars.

The said defendant, James Barnwell, one hundred and forty dollars.

The said defendants, John D. Cobb and Forrester Dollunde & Co., *in solido*, and of said copartnership, three hundred and fifty dollars.

The defendant, Mrs. D. Goodman, one hundred and forty dollars.

The defendant, Thomas J. Cooley, two hundred and eighty dollars.

The defendant, Jesse K. Bell, two thousand and one hundred dollars.

The defendants, Wm. J. Behan, John Thorn, R. J. Buckner, Emery Clapp, and W. W. Cabel, composing the commercial firm of Behan, Thorn & Co., *in solido*, seven hundred dollars.

The defendants, C. H. Foster and N. J. Rice, composing the commercial firm of C. H. Foster & Co., *in solido*, sixteen hundred and eighty dollars.

The defendant, William Gregory, seventy dollars.

The defendant, E. B. Hogan, eighty-four dollars.

The defendant, Francois Lacroix, one thousand four hundred dollars.

207 The defendant, John McIntosch, one hundred and forty dollars.

The defendant, T. Y. P. Trueman, seventy dollars.

The defendant, Mrs. Mary R. Palms, three hundred and fifty dollars.

The defendant, H. T. Vennard, three hundred and fifty dollars.

The defendant, The Association for the Relief of the Jewish Widows and Orphans, one hundred and forty dollars.

The defendant, The Hebrew Touro Infirmary and Hebrew Benevolent Association, seven hundred dollars.

The defendant, Percy Roberts, assignee of Thomas M. Simms, bankrupt, thirty-five hundred dollars:

It is ordered, adjudged, and decreed that the said above-named defendants *to* pay to the said complainant, respectively, the respective sums so adjudged against them, respectively, within twenty days after this decree shall be entered of record; that in the event said defendants or any of them shall fail or neglect to pay the said

208 money within the time limited by this decree, then and in that case the said complainant shall be entitled to process of execution or *fieri facias* against the property of each of said defendants that make such default to enforce the payment of said money so due by this decree.

And it is further ordered that such sum of money decreed against each of said defendants shall, when paid, be in satisfaction of the said demand set forth in the bill of complaint, but the bill shall still stand against the said defendants, respectively, until a sufficient sum of money shall be realized to pay and discharge the debts due by said Crescent — National Bank to its creditors, and until it shall be certain that no further contributions from such shareholders will be required for that purpose.

And it is further ordered that the said complainant do recover of and from said defendants his costs, to be taxed.

(Signed) W. B. WOODS, *Judge.*

209 Endorsement: 7261. U. S. cir. court. F. F. Case, receiver, *vs.* H'y Abraham & *al.* Decree. Signed, entered, and filed June 2d, 1875. Signed, F. B. Vinot, d'y cl'k. Amended June 7th, 1875.

Decree, Offered in Evidence by Defendant, 1880.

United States Circuit Court, District of Louisiana. In Equity.

FRANK F. CASE, Receiver of the Crescent City National Bank of New Orleans,
vs.
HENRY ABRAHAM *et al.* } No. 7261.

Decree as to certain defendants.

This case came on to be heard at this term as to the defendants hereinafter named, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz: That said Frank F. Case, in his capacity of
210 receiver of said Crescent City National Bank of New Orleans, complainant, do have and recover seventy per centum of the par value of the shares of the capital stock of said bank severally owned by said defendants, now assessed against them—that is to say:

That the complainant do have and recover from the defendant, Henry Abraham, as the owner of five such shares, the sum of three hundred and fifty dollars; and from the defendant, Theodore Brisbon, as the owner of seventeen such shares, the sum of eleven hundred and ninety dollars; and from the defendant, R. F. Buckner, as the owner of twenty-five such shares, the sum of seventeen hundred and fifty dollars; and from the defendant, Emery Clapp, as the owner of ninety-two such shares, the sum of six thousand four hundred and forty dollars; and from the defendant, The Crescent Mutual Insurance Company, as the owner of one hundred and thirty such shares, the sum of nine thousand one hundred dollars; and from the defend-

ant, the commercial partnership of Alcus, Scherck & Antey,
211 and Lewis Alcus, Isaac Scherk, and S. D. Antey, the individual members thereof, *in solido*, as owners of seventy such shares, the sum of forty-nine dollars; and from the defendant, William P. Ellison, as owner of ten such shares, the sum of seven hundred dollars; and from the defendant, Samuel Friedlander, the owner of twenty-six such shares, the sum of eighteen hundred and twenty dollars; and from the defendant, the commercial partnership of E. J. Hart & Co., and E. J. Hart and B. B. Hart, the individual members thereof, *in solido*, owner- of two such shares, the sum of one hundred and forty dollars; and from the Germania National Bank of New Orleans, owner of one hundred such shares, seven thousand dollars; the defendant, the late commercial firm of Katz & Barnett, and Sigmund Katz and Nathaniel Barnett, the individual members thereof, *in solido*, owner- of thirty such shares, the sum of two thousand one hundred dollars; and from the defendant,
212 the commercial partnership of Lehman, Abraham & Co., and Emmanuel Lehman, Meyer Lehman, Henry Abraham, and Henry Beer, the individual members thereof, *in solido*, owner- of fifteen such shares, the sum of one thousand and fifty dollars; and from the defendant, Gabriel Leaumont, owner of five such shares, the sum of three hundred and fifty dollars; and from the defendant, A. Levi, owner of seventeen such shares, the sum of eleven hundred and ninety dollars; and from the defendant, E. Newman, owner of ninety such shares, the sum of sixty-three hundred dollars; and from the defendant, Peter O'Donnell, owner of ten such shares, the sum of seven hundred dollars; and from the defendant, the commercial partnership of Pritchard and Beckham, the individual members thereof, *in solido*, owners of seventy-five such shares, the sum of five thousand two hundred and fifty dollars; and from the defendant, Mrs. A. A. L. Raymond and her husband, W. C. Raymond, owners of two such shares, the sum of one hundred and forty dollars; and from the defendant, J. A. Shakespeare, owner of twenty-
213 seven such shares, the sum of nineteen hundred and ninety dollars; and from the defendant, the commercial partnership of Stevens & Seymour, and William H. Stevens and William E. Seymour, the individual members thereof, *in solido*, owners of thirteen such shares, the sum of nine hundred and ten dollars; and from the defendant, Samuel M. Todd, — of two such shares, the sum of one hundred and forty dollars; and from the defendant, Joseph Villio, owner of two such shares, the sum of one hundred and forty dollars; and from the defendant, Mrs. L. Fabio, o-ner of eight such share-, the sum of five hundred and sixty dollars; and from the defendant, C. M. Soria, owner of one hundred such shares, the sum of seven thousand dollars; and from the defendant, H. O. Seixas, owner of fourteen such shares, the sum of nine hundred and eighty dollars; and from the defendant, D. S. Bryan, owner of twenty-two such shares, the sum of fifteen hundred and forty dollars; and from the defendant, the commercial partnership of McNeely &
214 Milburn, and W. L. McNeely and T. H. Milburn, individual members thereof, *in solido*, owners of ten such shares, the

sum of seven hundred dollars; and from the defendant, B. J. West, owner of fifty-eight such shares, the sum of four thousand and sixty dollars; and from the defendant, Charles B. Singleton, owner of two such shares, the sum of one hundred and forty dollars; and from the defendant, the Sun Mutual Ins. Company, of New Orleans, owner of twelve such shares, the sum of eight hundred and forty dollars; and from the defendant, William Steven, owner of ten such shares, the sum of seven hundred dollars; and from the defendant, George W. Hynson, owner of one hundred and sixty such shares, the sum of eleven thousand two hundred and seventy dollars.

And it is further ordered, adjudged, and decreed that said complainant do have writ of execution or *fieri facias* against said defendants and their property to enforce the payment of said sums of money so adjudged and decreed to be due by them, respectively.

215 And it is further ordered and decreed that such sum of money so decreed to be due by each of said defendants shall, when paid, be in satisfaction of the said demand set forth in the bill of complaint against him or them, respectively, but the bill shall still stand against the said defendants, respectively, and they shall be liable to further contribution until a sufficient sum of money shall be realized to pay and discharge the debts due by said Crescent City National Bank of N. O., and until it shall be certain that no further contribution from such shareholders will be required for that purpose.

And it is further ordered, adjudged, and decreed that said complainant do recover of and from said defendants his costs to be taxed.

And it is further ordered, adjudged, and decreed that said bill as to the defendants, Samuel H. Kennedy, W. C. Lipscombe, James McConnell, Jane E. Shumway, and tutrix, etc., and the rector, wardens, and vestry of Trinity Church, formerly the Church of the Holy Trinity, Jacob Katz, and Selime Barnett, be dismissed.

216 And it is further ordered that the bill be retained for further proceedings as to the other defendants therein named.

(Signed) W. B. WOODS, *Judge.*

The amount of this decree against William P. Ellison, def't, satisfied July 1, '76.

(Signed) ROUSE & GRANT, *Solicitors.*

Endorsement: No. 7261. U. S. circuit court. Frank F. Case, receiver of the Crescent City National Bank of New Orleans, *vs.* Henry Abraham *et al.* Decree. Entered and filed June 2d, 1876. (Signed) F. A. Woolfly, clerk. B. 18, page 393.

217 STATE OF LOUISIANA:

Fifth District Court for the Parish of Orleans.

I, Paul T. Abadie, deputy clerk of the fifth district court for the parish of Orleans, hereby certify that the foregoing (179) one hundred and seventy-nine pages contain a full and complete transcript of all the proceedings had, testimony and evidence adduced, and

all the documents filed on the trial of the cause wherein Lesassier & Binder are plaintiffs and Samuel H. Kennedy and E. C. Feinour are defendants, instituted in this court under the number 9999.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 31st day of July, in the year of our Lord one thousand eight hundred and eighty, and in the one hundred and fifth year of the Independence of the United States of America.

[SEAL.] (Signed) PAUL T. ABADIE,
D'y Clerk 5 *D. C.*

218 Supreme Court of Louisiana. No. 7984.

STATE OF LOUISIANA:

Fifth District Court for the Parish of Orleans.

LESSASSIER & BINDER, Appellees,
vs.
SAM'L H. KENNEDY & E. C. FEINOUR, Appellant. } No. 9999.

H. C. Miller & B. K. Miller, for appellees; J. McConnell, for appellant.

Transcript of appeal returnable to the supreme court on the 1st Monday in November, 1880.

Supreme Court of Louisiana.

Filed October 5th, 1880.
(Signed) EMILE DUPRE, *D'y Clerk.*

219 *Continuance.*

Extract from the Minutes, Monday, December 4th, 1882.

The court was duly opened pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was ordered by the court to be continued to Wednesday, the 6th instant, for trial.

Continuance.

Extract from the Minutes, Wednesday, December 6th, 1882.

The court was duly opened pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poche, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

220 This case was ordered by the court to be continued by preference.

Continuance.

Extract from the Minutes, Saturday, February 3d, 1883.

The court was duly opened.
Present: Their Honors Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.
Absent on account of illness: Edward Bermudez, chief justice.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was ordered by the court to be continued with preference.

Continuance.

Extract from the Minutes, Wednesday, February 14th, 1883.

The court was duly opened.
Present: Their Honors Edward Bermudez, chief justice, Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

221 LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was ordered by the court to be continued with preference.

Continuance.

Extract from the Minutes, Saturday, November 10th, 1883.

The court was duly opened.
Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was ordered by the court to be continued by preference.

Continuance.

Extract from the Minutes, Saturday, December 22d, 1883.

The court was opened pursuant to adjournment.
222 Present: Their Honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was called for trial, whereupon the court heard argument from Henry C. Miller, Esq., of counsel for plaintiffs and appellees, and, the usual hour for the adjournment of the court being near, the court ordered said case to be continued for further argument until Monday, the 7th day of January, 1884.

Continuance.

Extract from the Minutes, Monday, January 7th, 1884.

The court was duly opened.

Present: Their Honors Edward Bermudez, chief justice, and Charles E. Fenner, Felix P. Poché, Robert B. Todd, Thomas C. Manning, associate justices.

223 LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was ordered by the court to be continued for resumption of argument until Wednesday, the 9th instant.

Submission

Extract from the Minutes, Wednesday, January 9th, 1884.

The court was duly opened pursuant to adjournment.

Present: Their Honors Edward Bermudez, chief justice, and Felix P. Poché, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

This case was called for resumption of trial, and, having heard argument from Henry C. Miller, Esq., of counsel for plaintiffs
224 and appellees, and from James McConnell, Esq., of counsel for the defendants, appellants herein—

The court took said case under advisement upon the briefs now on file for parties in interest.

Opinion. Filed January 21st, 1884.

Supreme Court of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY & *al.* } No. 7984.

Mr. Justice MANNING:

On the 24th Feb'y, 1873, the plaintiffs sold to the defendant forty shares of the capital stock of the Crescent City National Bank for fifty dollars a share, and delivery was made.

The purchase was made through Feinour, a broker. The plaintiffs transferred the shares by signing the transfer on the proper book of the bank, leaving a blank for the name of the transferree.

Eleven days before, Feb'y 13th, the London correspondents of the bank had failed, and it had lost nearly the whole of its capital thereby. This disaster had affected its credit instantly and
225 seriously. Its stock fell, and on March 14th the payment of checks drawn upon it by its depositors was suspended, and on the 17th of the same month its circulating notes went to protest.

On March 15th the defendant sold these forty shares of stock to Thomas A. Adams for eleven dollars a share, and at his request transferred them on the books of the bank to the porter of Adams, a negro employed by him at small wages. On the bank transfer book therefore, the only transaction appearing complete was a transfer from Lesassier & Binder to Morris Dyer, the name of Mr. Kennedy in pencil being only in the margin.

The bank passed into liquidation, and its receiver disregarded the apparent transfer to the irresponsible negro, and sued Lesassier & Binder for seventy per centum upon these shares as contribution, and recovered $3,579.60, which they were compelled to pay. They now sue to recover that sum from the defendant.

Besides this suit at law of the receiver against Lesassier & Binder there was a bill in chancery filed by him against Kennedy to enforce liability against him, wherein the defence now set up
226 was also presented there and was sustained, and the bill was dismissed.

The gravamen of the complaint is that the insertion of Dyer's name was a device of Kennedy to escape the liability which attached to him as actual owner of the stock, and that by his failure to insert his own name he caused the receiver to pursue Lesassier & Binder. This assumes that the transfer from Kennedy was fictitious and colourable only, and that his intent in making it was to avoid responsibilities for contributions. The point given to the examination of the defendant as a witness is an effort to extract from him admissions to sustain this assumption.

A mere transfer would not have released him from responsibility. If the purpose of the transfer was merely to avoid liability to the bank or its creditors it would be deemed fraudulent in law, and would be void. When a national bank is in a failing condition a transfer of its shares, even though real and "out and out," but made to a person incapable of responding to liability and for the purpose of obtaining personal immunity, is void. National Bank *vs.*
Case, 9 Otto, 628. Even though the bank be not then in
227 failing condition, but the stockholder knows there is good ground to apprehend its failure, and he concludes with an irresponsible person for the purpose of substituting the latter in his stead, and thus leaving no one able to respond to the liability imposed by the statutes, such substitution will be void as to the bank, and he will be held liable. Bowden *v.* Johnson, 17 Otto, 251.

The object of the statute is to get at the real owner of the shares, and the courts in construing it uncover all his disguises, so that

if his name has never been on the transfer book, and his stock stands in the name of another by his procurement, he will yet be chargeable as a stockholder with the statutory liabilities. Davis *v.* Stevens, 17 Blatchf., 259.

Now, who was the real owner of these shares when the receiver took charge of the insolvent bank? Certainly it was not the defendant. His sale to Mr. Adams was not only out and out,
228 but was not made to an irresponsible person, nor for the purpose of escaping liability. He had bought on a falling market, eleven days after the disaster at London had toppled the stock, and it continued to go down until he was glad to get rid of it at Mr. Adams' offer, who bought because he had confidence that the bank would recuperate. All the insignia of fraudulent transfer are wanting. There was no collusion; the transfer was for an agreed price, which was paid, and the stock was not shuffled on to one less capable of answering calls on account of it than himself. Whatever may have been Mr. Adams' object in requesting the transfer to be put in the name of his porter, Mr. Kennedy had no thought of liability or design of escaping from it. This transaction was had eleven years ago. This was the first failure of a national bank, and dealers in stock of those institutions have since learned more than was then dreamt of in their philosophy.

But this does not meet the issue in its entirety. It is urged
229 with great force and plausibility that it was a wrongful act of the defendant not to have filled the blank left on the transfer book with his own name, and wrong again to fill it with the name of an irresponsible person, in consequence of which the plaintiffs have been condemned to pay contribution. In a sale of shares of the Hudson River State Company, where the New York statute required that transfers of stock must be entered upon the proper book, that court says: It must be implied in such contract that the seller would execute and deliver a transfer to the buyer, and that he would accept and register such transfer with the further undertaking that he should indemnify the seller against calls which the seller might be called on to pay if and so long as the transfer was not registered. Johnson *v.* Underhill, 52 N. Y., 203.

This obligation is equally binding upon every successive buyer.
It is the custom to leave a blank for the name of the trans-
230 feree, and it was because of this custom that the plaintiffs left the blank as above stated. This can only have been in contemplation of successive transfers and to facilitate them, so that if the final transferee is a responsible person and the blank is filled with his name the object is obtained of having a stockholder answerable for calls. Kennedy's sale was to Adams, who fulfilled all the requisites. Adams chose not to appear as transferee, but this did not relieve him from any liability which attached to him as transferee. Morris Dyer was his *alter ego*. It was through his instrumentality that a false name was inserted in the blank, and upon him rested the final undertaking to indemnify any one who might be called on to pay.

The proposition, says Dillon, sitting as judge, may be considered

as established that a share owner in a national bank which is a going concern has the absolute right in the absence of fraud to make a *bona fide* and actual sale and transfer of his shares at
231 any time to any person capable in law of purchasing and holding the same, and of assuming the transferror's liabilities in respect thereto. * * * The seller, for his own protection against creditors of the bank in case of insolvency, may transfer the same on the books to the vendee, and may file a bill to compel the vendee to record the transfer. Thompson's Nat. Bank Cases, 343–'4. The U. S. court in the chancery suit protected Kennedy, because he had exercised this right of making a sale which the court found to be *bona fide* and without taint of fraud.

But the plaintiffs insist that the defendant's sale lacked one of the elements mentioned in this last-quoted authority, for that he sold after the bank had failed. Payment of checks drawn upon this bank by its depositors was refused on March 14th. The defendant sold on March 15th. The circulating notes of the bank went to protest on the 17th. Under the provisions of the na-
232 tional banking act a bank is not legally disabled from prosecuting the business of banking until *she* is protested for failure to redeem *her* circulating notes. The date of the bank's failure is thus fixed as March 17th, and until then it was "a going concern," and the sale of its shares was made by the defendant prior thereto.

It is the misfortune of the plaintiffs that they have been condemned to pay, in disregard of the principle that under the ruling of the chancery court — protected the defendant, but we should only repeat the wrong they had suffered if we should condemn the defendant to suffer in like manner. One infliction of vicarious punishment is too much.

It is, therefore, ordered and decreed that the judgment of the lower court is avoided and reversed, and that there be now judgment in favor of the defendant, rejecting the plaintiffs' demand and for costs.

233 LESSASSIER & BINDER *vs.* S. H. KENNEDY & *al.* } No. 7984.

Mr. Chief Justice BERMUDEZ, dissenting:

When the plaintiffs sold their stock it passed through the broker to his undisclosed principal, then in existence, who from that moment became the owner thereof, and as such entitled to dispose of it.

The money which was used for the purchase was refunded by the principal to the broker, with his commission.

The plaintiffs had the right to expect when they signed in blank the bank transfer book that the name of the real purchaser at that date, & which had been noted in *margin* on the margin, would be written in ink in the body of the act.

The failure of plaintiffs to require such insertion before or at the

time of signature did not relieve the real purchaser from the obligation of inserting his name or that of another purchaser of
234 equal solidity, and did not authorize him, after disposing of the stock, to substitute to his own name & to that of his vendee, under a false date, the name of an individual who was a fiction, and who did not even know that his name had thus been used. The fact that this was done by the first purchaser at the instance of the second, Adams, who was that individual's agent for the general purpose of dealing in stock, is not equivalent to actual knowledge in the constituent, and does not shield the first purchaser from responsibility.

Had the defendant done that which he was bound to do and should have done—that is, incorporated his name, or at least that of his solvent vendee—the plaintiffs would not have been condemned by the Federal court, as they have been. It is only because the defendant has purposely kept himself and his transferree from the roll of stockholders, and therefore out of the reach of
235 the incoming receivers, by putting in without plaintiffs' knowledge the name of an irresponsible party at an improper date, that the plaintiffs had to pay and sustain consequent injury.

Relieving the defendant from all imputation of fraud, it cannot be well denied that he is unquestionably liable for the consequences of the voluntary commission of an unauthorized and illegal act, which he should not have done, and which, by his fault and his agency, has entailed on plaintiffs a disbursement of money which he would otherwise not have had to make.

The judgment should be affirmed.

LESSASSIER & BINDER *vs.* SAM'L H. KENNEDY.

Mr. Justice POCHÉ, dissenting:

I cannot concur with the opinion and decree of the majority in this case. It is conceded that Morris Dyer was an absolutely
236 irresponsible person, and that the inscription of his name on the transfer book of the bank did not and could not have the legal effect of releasing his immediate transferror, as shown on the registry of the bank. Hence it is that the receiver of the bank legally exercised his recourse against the plaintiffs, Lessassier and Binder, whose names appeared on the transfer book of the bank, as the transferro-s of the irresponsible or fictitious transferee, Morris Dyer, and that his course in the premises was judicially sanctioned and approved. For the same reason, and as a corollary of that proposition, flowed the conclusion that the receiver was not allowed to hold the defendant Kennedy as a shareholder. The transfer book did not show that he had ever owned the shares of the defunct bank stock, for which the receiver was seeking to levy & enforce contributions from any reputed or apparent holder of the same other than Morris Dyer, the
237 fictitious transferee known to him as a negro porter at small wages. The record shows the following as the real transactions affecting the forty shares of bank stock which have given rise

to this litigation: They were sold by plaintiffs through the broker, E. C. Feinour, to the defendant Kennedy, and by him to Thomas A. Adams. Both of the latter are shown to fill all the requirements of responsible shareholders of such stock under the national bank law. To comply with the true state of things the transfer book, at the date of the failure of the bank, should have shown the name of Adams as owner of the stock and as the proper party liable for contribution under the national bank law, and the book should also have shown the name of Kennedy as the transferee of plaintiffs and as the transferrer of Adams. Under such a showing no call could have been made on Lessassier and Binder, and to such a
238 showing they were legally entitled. In default of such a showing they were legally and properly held liable for contributions, which they paid under the judgment of a competent court. The question in the case is, therefore, to ascertain through whose act has the result visited on the plaintiffs been operated or brought about. The record shows that Feinour, the broker, was instructed by his principal, Kennedy, not to utter the latter's name as transfer-er under the purchase from plaintiffs for four or five days, and that at the end of that time he was instructed to inscribe his principal's name in pencil in the margin of the transfer book, and the evidence then shows that, after his sale of the stock to Adams in furtherance of the latter's request, Kennedy filled the blank in the transfer signed by pl'ffs on the 24th of February, by inserting in ink, in his own writing, the name of Dyer. Through and
239 in consequence of these acts of Kennedy the plaintiffs have suffered a loss which they would not otherwise have incurred. Hence the conclusion that the party whose acts have caused the damage should be held responsible therefor is irresistible.

The judgment appealed from should, therefore, have been affirmed.

Final Decree.

Extract from the Minutes, Monday, January 21st, 1884.

The court was duly opened, pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poche, Robert B. Todd, Charles E. Fenner, Thomas C. Manning, associate justices.

His honor Justice Manning pronounced the judgment and decree of the court in the following case:

LESSASSIER & BINDER
vs.
S. H. KENNEDY. } No. 7984.

On appeal from the civil district court for the parish of Orleans.

240 It is ordered and decreed that the judgment of the lower court is avoided and reversed, and that there be now judgment in favor of the defendant rejecting the plaintiffs' demand and for costs.

(The chief justice and Mr. Justice Poche dissent, for reasons set forth in their separate opinions.)

241 *Petition for a Rehearing. Filed Jan'y 28th,* 1884.

Supreme Court of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY and E. C. FEINOUR. } No. 7984.

To the honorable the supreme court of Louisiana:

The petition of Lessassier & Binder, the plaintiffs in the suit of Lesassier & Binder *vs.* Samuel H. Kennedy, No. 7984 of the docket of this court, respectfully shows—

That they are aggrieved by the judgment pronounced in this case, and respectfully apply for a new hearing in the case, for the reasons supported by the authorities hereinafter exhibited.

The firm conviction that the decision in this case—discharging the defendant, Samuel H. Kennedy, from liability—is at variance with the law, and deprives the plaintiffs of their rights, prompts this application for a hearing.

242 It stands our prominent that the plaintiffs have lost their money and would not have lost it if the defendant had registered the transfer of the stock bought by him in his own name, or in the name of any one capable of assuming liability for the stock. The defendant let his stock remain in the name of his vendors on the books of the bank until after the bank suspended payment on its checks, and then, when the severe liability of shareholders menaced all who stood in the relation of recognized shareholders, the defendant wrote over the names of Lesassier & Binder, who had sold to him, the name of an irresponsible negro, with whom the plaintiffs never had the slightest relation or connection of any kind. If the explanation comes to this point, that the defendant filled in the name of the negro over plaintiffs' names at the request of Adams, to whom the defendant found a purchaser for the stock, but who purchased not to go on the books as a shareholder,

243 the question remains, What right had the defendant thus to deal with plaintiffs' names in a transfer made to him and not to the negro? Passing the question now for discussion further along, it bears repetition that the practical result has been to make these plaintiffs pay a large sum of money for a liability on stock they did not own and which the plaintiffs would not have had to pay but for defendant's acts and conduct in reference to the stock after it became his by his purchase from the plaintiffs. The court now adju-ges that the plaintiffs have no cause of complaint against the defendant for the loss, practically, at least, cast on plaintiffs by reason of the attitude in which the defendant placed the plaintiffs. The United States circuit court, in a suit brought against the plaintiffs as registered owners of the stock, has adjudged they were liable, notwithstanding their *bona fide* but unregistered sale

244 to defendant. In this suit by plaintiffs to recover from defendant the money they have been made to pay because of that attitude on the registered list of shareholders in which the defendant put the plaintiffs this court, in effect,

reverses the judgment of the United States circuit court, and holds that the plaintiffs should not have been made to pay at all, and hence have no claim against the defendant. Is this court correct in this position? Were not these plaintiffs liable, standing, as they did, on the books of the bank as transferrees in a blank transfer—a blank until defendant wrote in the name of the negro? Is not that a clear case of liability under well-settled jurisprudence? Did the United States court do more than to announce the command of the law when it adjudged the liability of the plaintiffs? These are the questions which are decisive of the case. If the plaintiffs were responsible to the receiver, were so adjudged, and paid under the judgment, it remains, then, only to show that defendant's acts and conduct led to the plaintiffs' loss, and that they have claim
245 on him for restitution. The test of Lesassier & Binder is in the express provisions of the national banking act, and the evident policy which finds expression of those provisions. The liability of shareholders, in the event of the insolvency of the bank to the extent of the par value of the stock, is a fund provided for the creditors of the bank. There must be an inflexible standard of this liability or the act would be lamentably deficient. Is the receiver to go beyond the registered list to ascertain the owner of the stock? Is he to unravel the transactions in the stock never registered on the books of the banks to determine who is liable? If so, is it not manifest that a provision designed to secure the prompt payment of creditors' claims would be most uncertain and unsatisfactory in its results? Again, are transfers of stock at any time to be recognized? Is it allowable for a responsible party to transfer this stock when the bank is in actual insolvency, or, as in this case, after actual protest, the usual precursor of that which promptly followed the appointment of a receiver?
246 If such transfers were admitted there would be an end to the trust fund designed for creditors. All responsible people would be prompt to transfer their stock to men of straw. To determine, then, who are to be deemed shareholders liable to be called upon for stock liabilities, the law looks to the registered lists; and, secondly, inflexibly disregards all transfers of stock on the books of the bank made in a condition of actual or impending insolvency by responsible to irresponsible parties; in other words, such transfers in that condition made on the books are treated precisely as if they were not made, except that they point to the registered transferror as the party liable. The first branch of the proposition—that the law looks to the registered list—is illustrated by the provisions of the national banking act, which requires a list of the shareholders to be kept, and which requires all transfers to be registered on the transfer books of the bank. Revised Statutes of the United States, 5210, 5139, 5151–5152; Morse on Bank and Banking, p. 496.
247 It is illustrated, too, in all the cases where the court held pledges liable upon the ground that they figured on the registered list, and the court could not look beyond it. The rule is expressed thus: If creditors must look beyond the legal title, as exhibited by the books of the bank, they can never know against whom

to proceed. See Thompson's National Bank cases, p. 557; Palmer *vs.* Upton, 96 U. S., 330. Blank transfers are treated as if not made, necessarily because the statute prescribes the transfers shall be on the books. Thompson on Liabilities of Shareholders, sec. 217.

The other branch of the proposition, that transfers on the books to men of straw will not divest the liability of the transfer-or, rests on a policy so obvious that it commands acceptance. It is recognized and enforced in the text-books and in adjudicated cases. See Thompson's Liabilities, sec. 215, 99 U. S., 628; see 107 U. S., 251.

In view, then, of these tests of liability, how did Lessassier & Binder stand on the books of the bank when it passed into the
248 hands of the receiver? He had the right to look to the registered list. He was not called upon to involve himself in the labyrinth of uncertain lawsuits to find actual owners. He did see the defendant and failed on his answer, not merely that he had sold to Adams, but on the additional and conclusive ground that the defendant had never become a registered bondholder. With or without the instruction afforded by the defendant's answer, the receiver had the right to turn on Lesassier & Binder. They did stand as registered owners. By defendant's act, they stood as transferrors to the negro. That was the story the books hold. That was enough under accepted tests to make the defendants liable. They were made liable. The judgment against them, it is submitted, was inevitable. Their loss is to be traced to defendant's acts. He protected himself from the obligation he would have incurred by becoming transferee of his own stock by casting that liability on plaintiff.

The proposition cannot, it is submitted, be disputed that
249 as the plaintiffs stood upon the books their liability was inevitable; was so decreed, and properly decreed. That proposition should control the case against the defendant.

It is said the receiver can sue the owner whether registered or not. He can if he pleases. 17th Blatchford, p. 262. The question is, whether he cannot sue the shareholder, who has never caused any transfer from him to be registered, or who figures on the books as the transferror to a wholly irresponsible party; that was the predicament of Lesassier and Binder. Does the act or the policy on which it is framed deny to the receiver his recourse upon such a party? If the receiver has no remedy against him his suit, it will hardly be contended, is to be against the man of straw. The other alternative is he must go beyond the register to search for some one on whom he can fasten a liability. Under this construction the register, framed to exhibit at a glance who are shareholders, becomes of no
250 avail. If such was the law the receiver in many cases would be baffled. The very object of putting on the register the irresponsible name is to disguise the real owner. There might be numerous unregistered transfers; the receiver would have to go through all in his search for the real owner. If he sued one he could escape by showing he had sold; so on *ad infinitum*. The sale might be for a dollar up to ten or any amount, and yet, if an outright sale, the defendant could parry the suit by proving a sale to some one else. In the language of one of the decisions, if the registry is

not the test it could not be known with any certainty whom to sue. Thompson's Cases, p. 557. It thus must appear that if the transferror of stock could not be held in the case where his transfer was to a man of straw the disguises of ownership would be such as to leave the receiver practically no remedy at all. The provision for creditors is designed to be prompt and effective. The liability must be fixed by an inflexible test; otherwise the pro-
251 vision would fail. Hence the registry policy that the registered transferor of stock will be held unless there is placed upon the register some one capable of assuming his responsibilities. Has any court ever sanctioned the construction that will exempt the registered transferror, whose liability upon the register has never been effaced, except by a transfer after or on the eve of insolvency to a mere man of straw. Will any court ever deny the remedy against the registered transferor under such circumstances, and remit the receiver to the man of straw or to an uncertain quest after the owner? If not, this court must perceive that Lesassier & Binder were legally liable, and the judgment of the circuit court against them merely announced the law.

It may be said in this particular case there was no difficulty in ascertaining the sale to Adams. The act was not passed for particular cases. It was intended to answer for all cases and to secure the rights of creditors. This argument is that the act does
252 not intend to except transferrors of stock whose liability on the register was never attempted to be cancelled, except by transfers to straw names. If, thereiore, in this case the purchaser from Kennedy, though never registered, could have been ascertained and sued it still remains that no construction can be admitted that shuts the receiver from the registered transferror under circumstances like the present, and confines him to the unregistered owner and to his chance of finding him. All that this argument affirms is that in any case like the present, where the only transfer on the books is to a man of straw, made after suspension and in two days only before actual protest, that the receiver can sue the registered transferror—is not compelled to go after others with uncertain guides and more than doubtful results. Whether Adams was owner, whether he could have been sued, are unimportant questions. The issue is, whether Lesassier & Binder were not legally liable in the attitude the defendant placed them. The textual provisions
253 of the act which prescribes transfers on the books, the jurisprudence that wisely refuses to give effect to transfers to irresponsible parties, it is submitted, answer- the question. If further is requisite, is it not, in the plain policy of the act, prostrated, as it would be if the construction is allowed that Lesassier and Binder were not liable, as they were adjudged by the circuit court?

It is true, though, Adams could have been held, if sued. His transaction was with the defendant. Adams never was registered; he never intended to register. When he bought from the defendant it was with the distinct understanding that Morris Dyer was to go on the register. See Adams' testimony, page 114. He would have bought on no other condition. No responsible man in his

senses would have paid even ten dollars a share if it had not been understood he was not to be registered. He requested defendant to put Dyer on the register, and thus it came about that the defendant wrote the name of the negro over plaintiffs' names, exhibiting him as their transferee. Adams' defence, if sued, would have been he bought not to go on the register, so understood, so carried
254 out by his vendor. With what favor such a defence would be received, how a court would have viewed the whole transaction, is unnecessary to discuss; but whether a court could make a contract for Adams, force on him a liability to which he never assented and against which he was sedulous to guard, is sufficiently suggestive of the result of the construction that the receiver should have sued Adams, and could sue no one else. For such remedies it must occur to this court that the recognized tests of liability the act has been supposed to establish are not to be obliterated. Under the new tests proposed to be introduced, with the menace of disaster to the bank, responsibility would seek disguise in all forms of transfer, and the receiver would consume the assets in the attempt to evolve liability from transactions similar to that which this record exhibits.

The court, in its opinion, sustains the defendant's right to sell to Adams. The plaintiffs have no concern with that sale. He might sell to whom he pleased. That sale gave him no title to injure the plaintiffs by making them stand responsible for his stock, but if his sale to Adams is to be examined the fair test is, How would
255 that sale have stood the scrutiny of a court if Kennedy had registered as the owner of the stock he purchased? Could he have defended himself from liability in a suit brought by the receiver against him? He would have been upon the books as the transferee of Morris Dyer, precisely that position in which he chose for his own purposes to place these plaintiffs. It is idle to say Dyer's name would have protected him. Would the fact of his sale to Adams serve better? The sale to Adams is linked to the putting Dyer's name on the books. The sale to the responsible party was with the qualification that Dyer was to go on the book. It was Dyer that was to stand for liability under the act. Dyer could respond for no liability. What was Adams' design in putting his stock in Dyer's name? Need the question be asked? It was to evade the law, which, for the benefit of creditors, creates a trust fund to be derived from contributions levied on shareholders. It was proposed by Adams to hold stock in a national bank and baffle the laws that impose liabilities. Can the human mind frame any other motive that could prompt Adams to hold stock in a national bank
256 in the name of the negro porter except to escape liability? The defendant's motive was to sell his stock, and he could sell only on Adams' terms. Whatever the motive of defendant, the design to escape liability evinced by Adams in the act itself, the defendant aided by putting Dyer's name on the register. If liability for national bank shares could be thus evaded, the manifest purpose of the transaction, there would — an end of trust funds and with the laws on the subject. Under the circumstances, then, can the defendant ever plead in his own defence before any court the sale to

Adams, embracing, as that sale did, as one of its parts the placing of a name on the bank's register, and irresponsible name designed by Adams to evade the laws, and Adams' design, manifest on its face, promoted by the defendant, because he wished to sell his stock? At the bar of this court, if defendant was sued as a shareholder what would we the response to such a defense? What would be the appreciation of the Supreme Court of the United States of that
257 sort of defence, if then sued as a registered shareholder of a national bank? The defendant, under these circumstances, can derive no benefit from his sale to Adams.

The case of Johnson *vs.* Laflin, Thompson National Bank Cases, p. 345, cited in support of the opinion of this court, presents a striking contrast to this case on the point now under discussion. Laflin sold his stock to a responsible man with the expectation the responsible man should go on the register. The receiver sought to hold Laflin because the purchaser had registered as trustee—*i. e.*, as trustee for the bank, the shares of which had been sold, and as banks were inhibited from buying their own shares the receiver claimed that Laflin, having sold to one incapable of holding stock, should be condemned. The court exonerated Laflin upon the ground, with others, that he was no party to putting on the register the name of an irresponsible person. The decision is pregnant with the significance of that decision which would have been rendered if Laflin
258 there, as the defendant did here, had placed upon the register the irresponsible person. The court in that case was careful to say that if the name of Brittin, trustee, was to be deemed irresponsible, it was the act of Brittin, the purchaser, to which Laflin was neither party or privy. Here the defendant is privy and party to putting on the register the irresponsible negro, and that name is put on the register to screen liability and cover another sale which the defendant claims should protect him. If Laflin's defence in the case cited had been connected in any manner with a transaction which can be regarded in no other light than designed to defeat the laws of the land Laflin would have been held in that case.

In dealing with questions of transfers to evade liability the transaction must be judged by the surrounding facts and the intent that they fairly indicate. The time when the transfer is made is all important. If this court will turn to the cases in which transfers have been set aside it will be found that when the defendant sold to
259 Adams the same general facts existed that usually prompt men of national bank stock when liability is imminent. The bank had suspended. No sagacious man had reason to doubt the result. Protest followed; then the receivership. It was then and under these circumstances the defendant sold to Adams, not to be registered. That was suggestive of Adams' apprehension of liability. Was defendant less appreciative of danger? The defendant was eager to settle for $10 a share, with the request from Adams to register Dyer, and complied with the request. The defendant may have supposed he was under no liability—never registered; but if he had registered he could not have displayed a more unequivocal purpose to escape impending liability. If defendant had been on the reg-

ister his transfer to Dyer, wholly irrespective of his sale to Adams, would have condemned him—the fate of others, who, about the same time, transferred their stock in the same bank. See Case, receiver, *vs.* Crescent National Bank; see 99th U. S., pp. 628, 634,
260 especially the transfer from B. J. West to his porter, reported on p. 634 of the volume; see also 107 U. S., p. 251. The porter paid nothing, nor did Dyer.

The court is asked to re-examine the case of Johnson, receiver, *vs.* Laflin, Thompson's National Bank Cases, page 345. It will be found to give the defendant no support. In its facts, in its reasonings, and in its conclusion it is pointedly discriminated from this case. The court throughout is dealing with a sale by the registered owner to one perfectly responsible, who, in the contemplation of the vendor, was to go upon the register, a case in which the responsible party did go upon the register, with the addition of trustee added to his name, to which the court said no effect was to be attributed. "If," said the court, on p. 346, "Britton had registered individually, it is clear Laflin would not have been liable. As the matter now stands the bank and its creditors have every right and remedy against Britton they would have had if the shares had been transferred to him individually instead of to him as trustee." The court
261 indicates the right of the registered owner to transfer, but it has in contemplation, as is evident in every line of the decision, a sale to one who is capable of responding and who goes on the books. What can more distinctly mark the appreciation of the court than the language on p. 349 of the decision? What language better calculated to guard against any use of that decision to sustain defendant in this case? "It is proper to remark, in order to preclude erroneous inferences from the views here maintained, that — is probable that the unrestricted right to transfer has reference to transfers in solvent and going concerns, and are not intended to enable shareholders to escape from liability where the association has committed an act of insolvency or has ceased to be a going concern. Allen's Case, Law Rep. Eq. 449, per Lord Chancellor Selbourne; Chappell's Case, Law Rep. 6 Ch., App. 902. While we maintain the right of a shareholder to dispose of his shares absolutely by an out and out sale and registered transfer, and thus escape liability,
262 provided the sale is made *bona fide*, and the purchaser is in law capable of assuming the liabilities of the transferror, yet this does not involve the right to transfer, if it is sustained—work a fraud on the other shareholders or on the creditors of the bank."

The putting Dyer's name on the books, if it had been sustained, would have worked that very fraud of which the court speaks. It failed to injure the creditors of the bank. The loss was cast on these plaintiffs. Their title to redress against the defendant is quite as well founded as that the bank would have had against the defendant if he stood registered, instead of keeping plaintiffs to answer for his liability.

In the view of the court to discharge the registered owner, sale to a responsible party and registration of the party capable of responding are both essential to discharge the transferror. In this case

every such element was made before the bank suspended; it was made with no design to keep the solvent purchaser from the register, but with the distinct expectation of the vendor that he was to go on the register. It is needless here again to refer
263 to the conduct of the defendant and his own in putting the irresponsible name of the register. More than all, in that case the responsible name did go on the register, the court eliminating the addition of "trustee" and treating the registration as in his own name individually. That decision, it is submitted, affirms that the holder can transfer to a responsible person and that the sale and registration discharges the transferror. That is all for which the plaintiffs contend. It is precisely because the defendant did not sell and register a responsible name that these plaintiffs were made to pay and are now here demanding that restitution the defendant owes in any and every point of view.

The case, too, quite distinctly affirms by necessary implication the recourse of the receiver upon him, who, like these defendants, stands as registered transferrors to an irresponsible person. Laflin was sued as registered owner, whose transfer on the books, it was claimed, was one which the law could not recognize—that is, it was insisted the registered transfer was to a trustee incapable in
264 law of assuming the *the* liabilities of a stockholder. The theory of the case was precisely that on which Lesassier & Binder were made to pay in this case—that the registered owner is liable until his liability is effaced by a transfer on the books to one capable of responding. If the theory had been sustained in that case Laflin would have been held as registered owner; but the theory failed in the proof. There was the registration the law required. The court disregarded the word "trustee," relied on by the receiver to invalidate the transfer and to hold the registered owner.

It is needless to add that in dealing with the liability of shareholders in cases of prohibited transfers no distinction is to be made between transfers to persons in point of fact pecuniarily irresponsible. The great object is to protect a trust fund and to prevent the escape from responsibility of shareholders who can respond. It is idle to say that a solvent shareholder cannot transfer to one incapable in law from responding, but could, in a condition of insolvency, transfer on books to one equally incapable from
265 utter pecuniary responsibility. In either case the transfer, if permitted, violates the law in its spirit, intent, and policy. The transfer to Dyer on the books was as ineffective to discharge Lesassier & Binder as if made to an incapable person in any sense. See 99th United States, pp. 628, 634; 107th United States Syllabus, pp. 251, 261; Thompson's Cases, p. 339.

Now, can the defendant claim any assistance from Davis *vs.* Stevens, 19th Blatchford, p. 259? The case did not involve the liability of the registered owner, who, on the books of the bank, appears as transferring the stock to an irresponsible person. The case admitted of an adjudication on that point. What had been received as settled law, that such a transfer did not discharge the registered owner, that decision surely did not profess to disturb. The case, as appears from

from the outset of the decision, deals with a transfer made, observes the court, "when there was no suspicion of the insolvency of
266 the bank, and the bank remained in good credit for more than a year after." The court, it is evident, used this language to guard against any application of the decision to that class of cases where transfers are made in a condition of insolvency. In that case the registered owner, long before the failure of the bank, put his stock in the name of an irresponsible person. The stock continued to be, in fact, the property of the responsible party. The irresponsible person was, in fact, his agent. The question was whether the real owner, though not on the register, could be made liable. The court held that he could be. It held that the receiver could hold both. What application has that to this controversy?

Here the very different proposition is whether the registered owner is not liable to the receiver, when he practically remains on the books as owner, nothing to release him on the books ex-
267 cept a transfer of that nature, which courts have over and over again declared would not be recognized. The case is cited by — other side to sustain the defendant's right to sell his stock to an irresponsible person. It settles that any one can hold stock in the name of an irresponsible person, and that he will be liable. How does that advance the discussion here? The point is whether Lesassier and Binder were not liable. Their liability rests on another principle altogether. They stand as registered owners—transferrors—on the books of Dyer. It was their attitude and the character of that transfer that made them liable. The court on that occasion recognized in that very decision the principle of liability applicable to Lesassier & Binder. The court said "that if a registered owner transferred his stock in a failing corporation to an irresponsible person for the mere reason of escaping liability, or if the transaction was colorable only, the transaction was void as
268 against creditors," p. 262. The court in deciding that case did not trench upon that principle. It decided something more. If Lesassier & Binder had in fact transferred to Morris Dyer at the time and under the circumstances that transfer was made they would have stood in precisely that attitude of unquestionable liability stated in the decision, and in all other decisions that were ever made upon the point. Lesassier & Binder were judged by the register. The law admitted no other test, so far as they were concerned. That which they had not done this defendant made them appear on the register as having done—*i. e.*, transferred their stock to an irresponsible person to avert liability. On that basis they were condemned. And the decision from 17th Blatchford, with the other cases, all affirm there was the basis to condemn them furnished by defendant. That is enough for their case against him. The decision, while it affirms the right to transfer and hold stock in the name of an irresponsible person,
269 subject to the personal liability of both, does not affirm that this defendant had the right to cast his loss for his stock on these plaintiffs. It is far from maintaining any theory that will save the defendant.

What advantage can this defendant derive from the fact that in the suit aginst him by the receiver he was discharged from liability? Does that release him from liability to these plaintiffs? Why was he discharged from that liability? The authorities affirm that the purchaser of stock in a bank owes it to his vendor to put his name on the transfer or put some name competent to release his vendor from liability. It is the dictate of natural justice formulated in the expression of the duty and obligation of the vendor. The defendant did nothing approximating to that duty and obligation. He neither put in the transfer his name or any name entitled to recognition. What he did do was the reverse of that which his obligation imposed. He placed his vendors in the position to
270 receive the burden of loss; when sued in the Federal court he stood protected, not because of his sale to Adams, which he pleaded, but because he had never become a shareholder on the books. He evinced his appreciation of that defence by pleading it with great distinctness. His breach of duty to his vendors was his defence to the suit of the receiver. The answers to the interrogatories in the receiver's suit went further. The answer to the first only is as follows:

"I purchased on the 24th February, 1873, of or through E. C. Feinour, a broker, forty shares of the stock of the said Crescent City National Bank, par value one hundred dollars each, for which I paid fifty dollars per share and a brokerage of one quarter of one per cent. I sold said share- to Thomas A. Adams on the 15th day of May, 1873. The shares I purchased were never converted into stock to me or for me, but were transferred by Lesassier & Binder, as appears from the transfer book of said bank, in ink to
271 Morris Dyer and by pencil memorandum on margin to E. C. Feinour, S. H. Kennedy, and Morris Dyer successively. Mr. Adams, who purchased from me, requested that the transfer be made to Morris Dyer." The court is referred to the whole of the answer as well as the answers of interrogatories of the defendant in the suit of the receiver to appreciate the scope of his defence. Record, pp. 13 to 30.

Certainly these answers furnished an adequate basis for a judgment in his favor. He defended himself with his sale to Adams, but fortified by the very pertinent defence that he had never been a shareholder on the books of the bank, as well as by the statement in his answers to interrogatories that, as appears by the transfer books, the stock was transferred by Lesassier & Binder to Morris Dyer. True, the statement is qualified by the addition: "Mr. Adams, who purchased from me, requested it to be transferred to Dyer." If it appeared by the books that Lesassier & Binder transferred to Dyer it was defendant's work. He had created on
272 the books what in law was enough to condemn them. In his defence, in answering the interrogatories, he exhibited that apparent condition; Lesassier & Binder were condemned. Nor is it important to determine the influence exerted by the sale to Adams on the court which pronounced the opinion. Without that sale the answer exhibited enough to secure the defendant a judg-

ment and to open the way for a judgment against his vendors; not that he intended his vendors should be sued, but it was inevitable, notwithstanding, by his release. He was very solicitous to protect himself. When sued he could plead he never registered, and did so. When the plaintiffs were sued they stood as registered, and worse; "as appeared" by the books, they had transferred to Morris Dyer. It is submitted the judgment in favor of defendants, followed, as it was, by the judgment against plaintiffs, gives him no basis to withstand plaintiffs' demand for restitution.

273 The case against this defendant is that the plaintiffs sold to him stock in a national bank, holding their transfer of the shares in blank; he chose not to put his own name or anybody's name but that of the negro porter's, so that when the bank failed the defendants were made liable for that loss which would have fallen on him if he had registered. What question is open to debate in this case of law or fact? The authorities all affirm that the purchaser of stock owes it to his vendor to protect him from calls on the stock made on shareholders after the vendor has sold. If the vendor, by the omission of the purchaser to register his transfer, is compelled to pay the calls the law exacts restitution from the purchaser. The plaintiffs, Lesassier & Binder, demand that restitution. Have they paid the assessments levied on the stock they sold to defendants? The record answers that question. Were they not bound to pay? It is submitted there can be no question

274 that the plaintiffs were bound for the assessment of the receiver; bound because of defendant's breach of obligation in not liberating them from responsibility as shareholders, and by placing them in the attitude that brought that liability to them. The authorities on this branch of the case are here reproduced: Angell and Ames on Corporations, § 534; Thompson's National Bank Cases, p. 345; Walker *vs.* Bartlette, 36th English Common Law, p. 368; 7th Musan and Welby, p. 517; 52d New York, p. 206, containing an array of authority; Webster *vs.* Upton, 91st U. S., p. 60. The case is one of importance. The majority of the court has reached conclusions which it is believed will be perceived, on examination, are utterly unreconcilable with the settled jurisprudence. The chief justice and his honor Judge Poche dissent in this case. The judge of the lower court, one of the most careful and able of the

275 district bench, gave an elaborate decision in favor of the *of the* plaintiffs. The decision of the majority of the court is also at variance with that of the United States circuit court which adjudged that Lesassier & Binder were bound to pay; that payment thus adjudged to be obligatory upon them being the basis of their right to restitution from the defendant. The decisions of the supreme court of Louisiana command the highest respect—deservedly—the stronger reason that the court should pause upon the propositions advanced in the majority opinion with reference to transfers of stock, the liability of shareholders, and the questions involved in this case. That pause, it is believed with entire confidence, will result in the conviction of every member of the court that the plaintiffs stand here with an undisputable title to redress.

Wherefore plaintiffs pray that a rehearing be granted in this case.

Respectfully submitted,

MILLER & FINNEY,
Attorneys for Plaintiffs.

276 *Rehearing Refused.*

Extract from the Minutes, Friday, May 30th, 1884.

The court was duly opened, pursuant to adjournment.

Present: Their honors Edward Bermudez, chief justice; Felix P. Poché, Robert B. Todd, Thomas C. Manning, Charles E. Fenner, associate justices.

His honor the chief justice pronounced the judgment and decree in the following case:

LESASSIER & BINDER
vs.
S. H. KENNEDY. } No. 7984.

It is ordered that the rehearing applied for in this case be refused.

Petition for Writ of Error. Filed 31 *May*, 1884.

Supreme Court of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY. } No. 7984.

277 To the honorable the chief justice of the supreme court of the State of Louisiana:

The petition of Lesassier and Binder respectfully shows—

That they are aggrieved by the final judgment rendered by this court in the suit of Lesassier and Binder *versus* Samuel H. Kennedy, No. 7984 of the docket of this court; are advised the judgment is erroneous to their prejudice, and they desire to prosecute a writ of error to reverse said judgment to the Supreme Court of the United States.

Petitioners show that this suit is brought by them to recover from defendant, Samuel H. Kennedy, the assessments levied by the Comptroller of the Currency upon certain shares of stock in a national bank, for which in a suit instituted by the receiver appointed by the Comptroller the petitioners were adjudged liable by the judg-
278 ment of the United States circuit court for the district of Louisiana, and which they paid under said judgment, the said shares having *being* sold and delivered by them to defendant before the failure of the bank and before said assessments were levied, but which shares defendant did not, as plaintiffs maintain he was bound to do, have transferred out of plaintiffs' names on the books of the bank until after the failure, he then filling up the blank transfer of plaintiff- on said books intended by the plaintiffs as their

transfer to him with the name of an irresponsible party, so that when the failure occurred and when said assessments were levied the plaintiffs, by the defendant's act, were made to appear as making a fictitious transfer of national bank stock after the bank's failure, by reason of which, under the statutes of the United States fixing the liability of shareholders of national banks, which looks to
279 the registered list of shareholders and disregards fraudulent transfers, the plaintiffs were decreed liable for said assessments — paid the amount thereof. Under said judgment against them in favor of said receiver and in this suit by them against defendant they claim he is liable to them for the assessments so paid, because said assessments accrued after their sale and delivery to him of the shares, and against which assessments he was bound to protect them by putting his own name or that of some responsible party on the register instead of keeping his stock in plaintiffs' name-, then making them appear as transferring to an irresponsible party so as to cast on them a liability to the receiver for assessments on his stock.

That, the basis of plaintiffs' title to recover in this suit being that under a statute of and under an authority exercised under the United States by the receiver and under the judgment of the
280 United States circuit court, they were made liable for the assessments on defendant's stock which they had sold and delivered to him and for the assessments thereon they were made to pay, but for the payment thereof the plaintiffs claim the defendant is bound to reimburse them, it is manifest that there was drawn in question in this suit the construction of the said statute of the United States enforced by the judgment of the United States circuit court, and there was also drawn in question the authority of said receiver, under the United States, to demand, sue for, and recover from petitioners said assessments, on all of which they relied and set up in this suit as conferring on them their right of action against defendant, the judgment of the court being adverse to said right claimed under the aforesaid Federal statute, judgment, and authority, maintaining that said receiver had no such authority and that
281 these petitioners were not bound for said assessments under said statute, hence had no basis to demand from the defendant the reimbursement claimed in this suit, as appears by the pleadings and judgment in this suit specially referred to for fuller explanation and greater certainty, by reason of all of which the said judgment of this court against these petitioners reversing their judgment against defendant in the court below is within the jurisdiction of the Supreme Court of the United States to review the suit involving the Federal question aforesaid, pas*t* upon and decided by this court adverse to the right claimed by petitioners under said Federal statute, judgment, and authority, and petitioners desire a writ of error from the Supreme Court of the United States to review said decision of this court.

Wherefore petitioners pray that said writ of error be allowed them in this case, returnable to the Supreme Court of the United States on the first day of the ensuing term of said Court, the said
282 writ to operate as a supersedeas upon petitioners furnishing

bond with good and sufficient surety in the sum of five hundred dollars, conditioned as the law directs; the said defendant be cited to answer the said writ, and for general relief.

(Signed) MILLER & FINNEY,
Att'y- for Pet'rs.

Order.

Writ allowed on bond of one thousand dollars, conditioned as the law provides, being furnished.

(Signed) E. BERMUDEZ,
Chief Justice.

New Orleans, June 1, 1884.

Writ of Error. Filed 31st May, 1884.

LESASSIER & BINDER
vs.
SAM'L H. KENNEDY & E. C. FEINOUR. } No. 7984.

283 Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana, copy in pursuance of the statute in such cases made and provided, this 31st day of May, one thousand eight hundred and eighty-four.

HENRY C. MILLER,
Att'y of Plaintiff in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Louisiana before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Lesassier & Binder, as plaintiffs, and Samuel H.
284 Kennedy, as defendant, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such validity; or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Lesassier & Binder, as by their complaint appears, we, being willing that error, if any hath been, should
285 be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together

with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the — day of June, in the year of our Lord one thousand eight hundred and eighty-four.

(Signed) E. R. HUNT,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

286 Allowed by—

E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

Bond for Writ of Error. Filed 31 *May,* 1884.

Supreme Court of Louisiana.

LESASSIER & BINDER
vs.
SAM'L H. KENNEDY & E. C. FEINOUR. } No. 7984.

Know all men by these presents that we, Lesassier & Binder, as principal-, and —— ——, as securities, are held and firmly bound unto Sam'l H. Kennedy in the full and just sum of one thousand dollars, to be paid to the said Samuel H. Kennedy and his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this — day of ——,
287 in the year of our Lord one thousand eight hundred and eighty-four.

Whereas lately at a term of the supreme court of Louisiana, holding sessions in a suit pending in said supreme court, wherein Lesassier and Binder are plaintiffs and Samuel H. Kennedy is defendant, judgment was rendered against Lesassier & Binder, and the said Lesassier & Binder having obtained a writ of error and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation directed to the said Samuel H. Kennedy, admonishing him and citing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if said Lesassier & Binder shall prosecute their writ to effect and answer all damages and cost- if they fail to make their plea good,
288 then the above obligation to be void; else to remain in full force and virtue.

(Signed) LESASSIER & BINDER,
Per HENRY C. MILLER.
" TH'S D. MILLER.

Sealed and delivered in the presence of—
HENRY C. MILLER.

Approved:
(Signed) E. BERMUDEZ,
Chief Justice of the Supreme Court of Louisiana.

Citation of Appeal. Filed July 11th, 1884.

Supreme Court of Louisiana.

LESSASSIER & BINDER
vs.
S. H. KENNEDY. } No. 7984.

The President of the United States to Samuel H. Kennedy, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of
289 — filed in the clerk's office of the supreme court of Louisiana for the 1st district, at New Orleans, wherein Lesassier and Binder are plaintiffs in error and you are defendant in error.

And you are to show cause, if any there be, why the judgment rendered against the said Lesassier & Binder, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

(Signed) E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

Marshal's Return. Filed July 11th, 1884.

On July 2d, 1884, I served a true duplicate of this the original citation in error on Samuel H. Kennedy, defendant in error herein,
290 by delivering the same to him in person in the city of New Orleans, eastern district of Louisiana.

(Signed) J. R. G. PITKIN,
U. S. Marshal, East. Dist. of Louisiana,
By E. S. CURRY,
D'y U. S. Marshal.

Marshal's Affidavit.

Personally appeared before — E. S. Curry, a lawful deputy marshal of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served duplicate of this the original citation in error on the defendant in error within named, as set forth in his official return herein.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Sworn to & subscribed before me July 2d, 1884.
(Signed) E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

291 *Certificate of the Clerk of the Supreme Court.*

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, George W. Dupré, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing two hundred and ninty pages contain a full, true, and complete copy of the transcript of the proceedings had in the fifth district court for the parish of Orleans in a certain suit wherein Le Sassier and Binder were plaintiffs and Samuel H. Kennedy and E. C. Feinour were defendants, and also of all the proceedings had in this supreme court on the appeal taken by said Samuel H. Kennedy, which appeal is now on the files thereof under No. 7984.

292 In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this twenty-first day of June, anno Domini one thousand eight hundred and eighty-four, and in the one hundred and eighth year of the Independence of the United States of America.

[Seal Supreme Court of the State of Louisiana.]

GEORGE W. DUPRÉ, *Clerk.*

Certificate of Chief Justice.

UNITED STATES OF AMERICA, *State of Louisiana:*

Supreme Court of the State of Louisiana.

I, Edward Bermudez, chief justice of the supreme court of the State of Louisiana, do hereby certify that George W. Dupré
293 is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of George W. Dupré to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this twenty-first day of June, in the year of our Lord one thousand eight hundred and eighty-four.

[Seal Supreme Court of the State of Louisiana.]

E. BERMUDEZ,
Chief Justice of the Supreme Court of the State of Louisiana.

294 THE UNITED STATES OF AMERICA:

The President of the United States to Samuel H. Kennedy, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana for the 1st district, at New Orleans, wherein Lesassier & Binder are plaintiffs in error and you are defendant in error; and you are to show cause, if any there be, why the judgment rendered against the said Lesassier & Binder, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

295 [Endorsed:] No. —. Lesassier & Binder *vs.* S. H. Kennedy. Supreme court of Louisiana. Citation. Filed July 11th, 1884. George W. Dupré, clerk.

Marshal's Return.

Rec'd July 1, 1884, by the U. S. marshal, and on July 2d, 1884, I served a true duplicate of this the original citation in error on Samuel H. Kennedy, defendant in error herein, by delivering the same to him in person in the city of New Orleans, eastern district of Louisiana.

J. R. G. PITKIN,
U. S. Marshal East. D'st of La.,
By E. S. CURRY,
D'y U. S. Marshal.

Personally appeared before me E. S. Curry, a lawful deputy of J R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true duplicate of this the original citation in error on the defendant in error within named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal.

Subscribed and sworn before me July 2d, 1884.

E. R. HUNT,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

296 THE UNITED STATES OF AMERICA:

The President of the United States to Samuel H. Kennedy, defendant in error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of Louisiana for the 1st district, at New Orleans, wherein Lesassier & Binder are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said Lesassier & Binder, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and eighty-four.

E. BERMUDEZ,
Chief Justice Supreme Court of Louisiana.

297 [Endorsed:] United States circuit court. No. —. —— —— *vs.* —— ——. Citation. [In pencil:] Per —— ——. July 23rd, 1884.

Marshal's Return.

Rec'd July 23rd, 1884.

And on the 23rd day of July, 1884, I served a copy of the within citation personally on Samuel H. Kennedy, defendant in error herein named.

Ret. same day.

JNO. H. HANNON,
D'y Sh'ff, Parish of Orleans, La.

John H. Hannon, being duly sworn, deposes and says that he was, at the date of the service of this citation, a lawful deputy sheriff of the sheriff of the parish of Orleans, and that he served a true duplicate of the citation written on the reverse hereof on Samuel H. Kennedy, the defendant in error within named, in person, as set forth in the return herein.

JNO. H. HANNON.

Sworn to and subscribed before me, at New Orleans, La., this 26th Sept., 1884.

{ Seal Wm. J. Castell, Notary Public, New Orleans, State of Louisiana. }

W. J. CASTELL, *N. P.*

Endorsed on cover: Louisiana supreme court. No. 328. Lesassier & Binder, plaintiffs in error, *vs.* Samuel H. Kennedy. Filed 29th September, 1884.

123-5-21
123-1-21

Office Supreme Court U. S.
FILED.
SEP 30 1887
JAMES. H. McKENNEY.
CLERK.

UNITED STATES SUPREME COURT.

No. 328.

LESSASSIER & BINDER

versus

SAMUEL H. KENNEDY

ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for Lessassier & Binder, Plaintiffs in Error

HENRY C. MILLER,
Attorney for Plaintiffs in Error.

L. GRAHAM & SON, PRINTERS, 101 GRAVIER ST., N. O.

UNITED STATES SUPREME COURT.

No. 328.

LESSASSIER & BINDER

versus

SAMUEL H. KENNEDY

ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for Lessassier & Binder, Plaintiffs in Error

STATEMENT OF FACTS AND THE ISSUES.

On February 24th, 1873, Lessassier & Binder, the plaintiffs in error, sold to Samuel H. Kennedy, defendant in error, forty shares of stock of the Crescent City National Bank, a banking corporation organized under the laws of the United States. The sale was made through E. C. Feinour, a broker, acting for Kennedy; the price was paid, the certificate of shares delivered, and Lessassier & Binder signed the transfer of the shares on the books of the bank, leaving the name of the purchaser to be filled in with Kennedy's name. All this was done in accordance with the usual mode in which stocks are sold and delivered. The transac-

tion was complete, and Kennedy became the owner of the stock. See testimony of Lessassier, p. 49; Feinour, p. 54; Kennedy, pp. 10, 13, 18; Seixas, p. 52.

But Kennedy, for his own purposes, and without the knowledge or consent of his vendors, did not fill in his name as the purchaser of the stock. Checks on the bank were refused payment on the 14th March, 1873; on the 17th of the month, three days after, it went to protest, and the appointment of a receiver by the Comptroller soon followed. After the refusal of the bank to pay its checks, and but two days before the actual protest, Kennedy sold the stock to Thomas A. Adams: the stock standing at that time, for all practical purposes, in the name of Kennedy's vendors, for he had never filled in his name as the purchaser in the blank transfer signed by them. When Kennedy sold to Adams, it was agreed between them that Adams was not to go on the books of the bank as the owner, but that the stock was to be put in the name of Morris Dyer, an utterly irresponsible negro porter in Adams' office. To consummate this arrangement with Adams, on March 17th, 1873, nearly a month after Kennedy had bought and received the stock from Lessassier & Binder, he wrote over their signatures on the transfer book the name of Morris Dyer; and by the use thus made of the signature of Lessassier & Binder Kennedy caused it to appear on the books of the bank that Lessassier & Binder, *his* vendors, had sold the stock to a man of straw, and that, too, after the suspension and protest of the bank. See testimony of Reynes and protest, rec. pp. 44, 35; Kennedy's testimony, pp. 13, 14, 16, 17, 18; transfer, with name Morris Dyer, written by

Kennedy over signature of Lessassier & Binder, rec., p. 43; testimony of Uhlhorn, p. 52; Ogden, p. 52; appointment of comptroller, p. 37.

The comptroller levied an assessment of $70 per share on the shareholders. Apprised of Kennedy's purchase from Lessassier & Binder, and of the mode in which he had used their names, the Receiver first sued Kennedy, deeming him liable for the assessment. But he resisted the suit on the ground that he had sold to Adams and never registered as owner. Adams, as stated, had been equally careful not to register. Kennedy's defence prevailed, and thus prepared the way for the suit against his vendors. The Receiver then brought suit in the United States Circuit Court and recovered judgment against Lessassier & Binder for the assessment of $70 per share, and under execution they paid three thousand five hundred and seventy-nine dollars, amount of the judgment, interest and costs. They were adjudged liable by the United States Circuit Court, upon the familiar construction of the national banking act, that, though stock is sold and delivered, if the purchaser does not register (the transfer to the man of straw being no transfer in law), in such case the vendor registered as owner is liable for assessments. Thus Lessassier & Binder, under the judgment and execution of the United States Circuit Court, were compelled to pay the assessments on Kennedy's stock, levied after their sale to him; and this liability was cast on them by his not filling in his name as purchaser, or putting on the registry any competent transfer from his vendors, and by writing

over the signature of his vendors on the transfer book, the name of an irresponsible person. See bill filed by receiver against shareholders of Crescent City National Bank, Kennedy being included, rec., pp. 63-64; Kennedy's answer, rec., p. 14; decree United States Circuit Court in his favor, p. 78. See petition of Receiver against Lessassier & Binder, p. 60; their answer, p. 62; decree against them, p. 63; receipts for the amount of this judgment and costs, rec., pp. 40-41; testimony Lessassier, p. 49.

Relying on this judgment of the United States Circuit Court, Lessassier & Binder sued Kennedy in the Civil District Court of the parish of Orleans, for the amount they had been compelled to pay on his stock, by reason of his mode of dealing with their names. The judgment of the State District Court was in their favor, but on appeal the Supreme Court of the State reversed the decision, maintaining that the judgment of the United States Circuit Court, relied upon by them as the basis of their recovery against Kennedy, was wrong, void and of no effect. The Supreme Court gave the construction to the national banking act that Lessassier & Binder, although their sale to Kennedy had never been registered, were not liable, should not have been condemned by the United States Circuit Court to pay the assessment; that the judgment of the Circuit Court made the wrong party liable—an instance of "vicarious punishment," as the court expressed it; that Adams, who had never registered, was the party liable for the assessment; and hence the Supreme Court concluded that Lessassier &

Binder not bound for the assessment, notwithstanding the judgment against them of the United States Circuit Court, and had no claim whatever upon Kennedy. This decision was made by the majority of the court, the Chief Justice and Justice Poche dissenting in able opinions. See petition, answer, judgment, 1, 2, 59, 81, 84, 85.

The plaintiffs in error prosecute this writ of error to reverse this decision of the Supreme Court of Louisiana.

ASSIGNMENT OF ERRORS.

1st. That there is error in the decision of the Supreme Court of Louisiana in holding, as the true construction of the national banking act, that Lessassier & Binder, plaintiffs in error, although adjudged liable by the United States Circuit Court, were not liable for assessments on national bank stock sold and delivered by them to Kennedy, the defendant in error, the assessments being levied after the sale, but their vendee, Kennedy, never having placed on the transfer book of the bank his name, or the name of any person competent to become the purchaser of the stock.

2d. That there is error in the decision of the Supreme Court of Louisiana, in its construction of the national banking act, in holding that Adams, to whom Kennedy sold this stock, but who, like Kennedy, never registered, was exclusively liable for the assessments on the stock, and that Lessassier & Binder, though standing as registered owners, were not liable for the assessments.

3d. As the sequence of the errors above assigned in the construction of the national banking act, the State Supreme Court erred in its conclusion that Lessassier & Binder, never liable for the assessments, in the erroneous view of the court had no cause of action against Kennedy, their vendee, for the assessments levied on the stock after the sale to him, and which his vendors were compelled to pay by his leaving his stock standing in their names on the books of the bank.

4th. That the Supreme Court of Louisiana erred in holding to be void and in refusing to give effect to the judgment of the United States Circuit Court adjudging Lessassier & Binder liable for these assessments, that judgment being relied upon by them in their suit in the State court as the ground of their recovery from Kennedy, their vendee, of the assessments on the stock they had sold to him, and which they had been compelled to pay under that judgment.

5th. That the State Supreme Court erred in deciding that Lessassier & Binder were not entitled to recover from Kennedy, its decision being based upon the erroneous conclusion that the judgment of the United States Circuit Court, the basis of the suit of Lessassier & Binder, was wrong, and upon the erroneous construction by the State Supreme Court of the provisions of the national banking act governing the liability of shareholders in national banks.

ARGUMENT.

There can be no contention that on the 24th February, 1873, Lessassier & Binder, the plaintiffs in error,

sold and delivered the forty shares of stock of the Crescent City National Bank to Samuel H. Kennedy, the defendant in error. The certificates were delivered to him, his vendors signed the transfer on the books of the bank, and there was left for him nothing to do but to fill in his name in the blank left for that purpose in the transfer. He paid the price and had full possession and control of the stock, for he sold the shares to Adams. Nor is it at all material that the purchase was made by the defendant in error through a broker, for with reference to any obligation arising out of the sale, the defendant, although buying through a broker, was bound as effectively as if he had bought personally. As between vendor and vendee the transaction was completed, and Kennedy was the owner of the stock. Angell & Ames vs. Corporations, sec. 354, Field vs. Corporations, sec. 354; Thompson's Bank Cases, p. 343; Johnson vs. Laflin, 103 U. S. 804.

While the sale of stock is perfect between the vendor and vendee by delivery of the certificate, and the signing by the vendor of the transfer on the transfer book of the bank, leaving it for the purchaser to fill in his name, it is equally clear that the vendors remain liable for assessments on the stock, if the purchaser fails to have the stock transferred to him or to some one capable of becoming owner. Transfers to irresponsible parties are disregarded. Thompson on the Liabilities of Shareholders, sec. 217; National Bank vs. Case, 99th U. S. 628, Pulman vs. Upton, 96th U. S., p. 330; Bowden vs. Johnson, 107th U. S., p.

260 ; Price vs. Whitney, 28th Fed. Rep., p. 297 ; Anderson vs. Philadelphia Co., 111th U. S., p. 483.

Nor can there be any controversy that, when the vendor of national bank stock has delivered it to the purchaser, signing the transfer on the books of the bank, leaving it for the purchaser to fill in his name, that the purchaser incurs the obligation to assume the risks and ownership of the stock, by placing on the books of the bank his name or that of some one competent to become owner under the law, so as to relieve the vendor from liability for future assessments. In the expressive language of this court, in one of the cases cited below. "It was the purchaser's duty to have the transfer of the stock made to them so as to secure the vendor from liability for future assessments." If the purchaser fails in this duty and keeps *his* stock standing after the sale in the names of his vendors, so as to subject them to liability for assessments, the purchaser is undoubtedly bound to his vendors for the assessments they have been made to pay. Thompson's Liability of Shareholders, sec. 217 ; Walker vs. Bartlette, 36 English Common Law Reports, p. 368 ; 2d Gex & Smale Chancery, p. 310 ; 7th Meesum & Welby, p. 517 ; Webster vs. Upton, 91 U. S., p. 91 ; Thompson vs. Underhill, 52 N. Y., p. 203 ; 12th Conn., p. 538.

In accordance with this well settled liability of the purchaser to the vendor of stock, this suit is brought by Lessassier & Binder to recover from Kennedy, their

vendee, the assessments levied after the sale to him, which they were compelled to pay. He not only left the stock standing in their name, but he did more to fasten *his* liability on them. He put them in the false attitude, on the books of the bank, of selling to the irresponsible negro. There was thus on Kennedy's part, not the mere negative breach of his obligation to take the stock out of his vendors' names on the bank's register, but the breach was aggravated by his action. (See transfer, with name of Dyer filled in by Kennedy, and his testimony, pp. 13, 14, 16, 17, 18.) Nor is his conduct, in its moral or legal aspects, in the least mitigated by the fact, that the name of Dyer was inserted in the transfer at the suggestion of his vendee, Adams. His sale to Adams gave him no right thus to use the names of Lessassier & Binder. Both he and Adams evinced their appreciation of the risks of ownership of national bank stock. Each in turn withheld his name from the registry, and both concurred in wrongfully putting Lessassier & Binder in the position of responsibility; and the prudence of Kennedy in this respect was carried to the extent of a gross violation of his clear, palpable obligation to his vendors. This suit is brought to redress that wrong and compel him to make restitution for the loss he imposed on his vendors.

The Receiver first sued Kennedy, but he defended himself successfully, on the ground that he had never registered and had sold to Adams. The suit and judgment against Lessassier & Binder, who, by Kennedy's acts and conduct, continued to be registered, was the inevitable consequence. Now, what is there to defeat the restitution from him, which this suit

is brought to enforce? The sale and delivery to him of the stock is unquestioned: that he never registered, but left his stock standing in his vendors' names, and did more in the same direction, is beyond any controversy; that the assessments were levied after the sale, and that his vendors were compelled to pay the assessments, is shown by the judgment of the U. S. Circuit Court. It would certainly seem to be clear, on principle and on the authorities already cited, that plaintiffs have made out their claim for relief.

Your honors will find the solution of the discomfortune of the plaintiffs in error, in the construction adopted by the State Supreme Court of the national banking act. That Court held that, under the act, Lessassier & Binder, though registered as owners of this stock, were never liable for these assessments; that the judgment of the U. S. Circuit Court, which ascertained their liability, was erroneous; and, hence, paying when not bound, they had no claim on Kenned , their vendee, for the amount they paid. Thus, the plaintiffs in error were defeated in the Supreme Court of Louisiana, and defeated soley because the court held that the judgment of the U. S. Circuit Court was entirely erroneous, on which plaintiffs paid, and on which they necessarily relied in their suit for reimbursement, and because of the singular interpretation put by the State court on the national banking act. The case thus turns on the federal question arising under that act. The determination of the federal question, that adopted by this Court and by all Courts hitherto called on to deal with the question, gives the case to the plaintiffs in

error. The other, that of the Supreme Court of Louisiana, defeats the plaintiffs' recovery.

The decision of the Supreme Court of the State undertakes to maintain the proposition that Adams was exclusively liable for the assessments. Of course, if Adams alone was liable, Lessassier & Binder were wrongfully condemned to pay. If they were wrongfully condemned they must bear the misfortune, and have no claim on Kennedy, their vendee. The sale to Adams was at eleven dollars per share, made after the suspension of the bank. It was a speculation on his part, that the possible dividends from a broken bank might pay ~~half~~ *tacR* the pittance he was willing to risk for the stock. He was to take no other risk. The perils of ownership were to continue upon Lessassier & Binder, under the very convenient use of their names, in conjunction with that of Morris Dyer, devised between Kennedy and Adams. Now is it possible to maintain that the Receiver should have confined his suit for these assessments to Adams, not registered, and had no right to a judgment against Lessassier & Binder, who never ceased to be registered? The affirmative of the proposition, is that of the Supreme Court of Louisiana. Will it bear the statement, least of all, the discussion? All know that the policy of the national banking act, obviously to prevent evasions of responsibility, adopts a fixed test to ascertain the shareholders of the national banks. That test is the registry. Hence, too, the fixed jurisprudence that rejects transfers to straw men, made to evade or disguise responsibility for assessments. The law looks to the registered list when the bank fails,

and holds the registered owner, even though he has sold his stock, unless it is transferred on the book to some competent party. How, then, could Adams' unregistered sale have lifted the burden of responsibility from Lessassier & Binder, standing as they did as registered owners?

The case of Davis vs. Stevens, 171 Blatchford, p. 259, is cited by the Supreme Court of Louisiana. That case decides that under the state of facts there presented, the real owner, who carries national bank stock in the name of an irresponsible party, may be held for assessments. Surely, that decision had no purpose to limit the liability of shareholders. The law and the settled jurisprudence declared the registered owner liable under all and any circumstances. The decisions went a step further, and held that the unregistered owner might also be held. But Lessassier & Binder, registered when sued by the Receiver, were undoubtedly liable as the United States Circuit Court adjudged. There is no intimation to the contrary in the decision in 17th Blatchford, or in any decision, or in any line of the law. See also Anderson v. Philadelphia Company, 111th U. S., p. 483.

The case, then, presents the federal question arising under the laws of the United States, defining the liabilities of shareholders of national banks. The State Supreme Court decided that question adverse to the right claimed by plaintiffs, and refused to give effect to the federal judgment upon which plaintiffs relied in the State court; for if that judgment of the Circuit Court is correct the plaintiffs' right to recover inevi-

tably follows. The federal question was necessary to be determined, was determined, and its determination was decisive against plaintiffs in error. Record p. 81 et seq. The case is here on the writ of error, to reverse the decision of the State court on this federal question, adversely to the right claimed by plaintiffs in error, arising under the laws of the United States, and under the judgment of the United States Circuit Court. It is submitted the decision of the State Supreme Court is manifestly erroneous; that this court has jurisdiction to reverse and should reverse that decision. Revised Statutes of the United States, sec. 709; Armstrong vs. Athens Cy., 16 Peters, p. 285; Ocean Co. vs. Polleys, 13 Peters, p. 164; National Bank vs. Matthews, 98 U. S. 621; Swope vs. Leffingwell, 105 U. S. 3; Murdock vs. Memphis, 20 Wall., p. 636; Factors Co. vs. Murphy, 111 U. S. 741. 21st Wallace p. 130

The judgment of the Fifth District Court of the State (rec., p. 63) was in favor of the plaintiffs in error. The Supreme Court of the State should have affirmed, instead of reversing that judgment. The decree of this Court should now reverse the decision of the Supreme Court of Louisiana, and direct it to affirm the judgment of the Fifth District Court, thus preserving to plaintiffs the benefit of their original judgment and the mortgage arising from its registry. Revised Civil Code of Louisiana, articles 3322, 3345, 3346; Revised Statutes of the United States, sec. 710.

Respectfully submitted,

HENRY C. MILLER,

Attorney for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
SEP 30 1887
JAMES. H. McKENNEY,
CLERK.

UNITED STATES SUPREME COURT.

No. ——

LESSASSIER & BINDER, PLAINTIFFS IN ERROR,

versus

SAMUEL H. KENNEDY, DEFENDANT IN ERROR.

ERROR TO THE SUPREME COURT OF LOUISIANA.

Brief for Plaintiffs in Error on the Motion to Dismiss.

This case presents the federal question arising under the laws of the United States respecting the liabilities of shareholders of national banks, and under the judgment interpreting that liability rendered by the U. S. Circuit Court, on which judgment plaintiffs in error relied for the recovery sought by them in the State court. The Supreme Court of the State decided the federal question adversely to the right asserted by plaintiffs, arising under the federal judgment and laws of the United States. The case is here on the writ of error prosecuted by plaintiffs to reverse the decision of the Supreme Court of Louisiana, and the case, in brief, is this:

Lessassier & Binder, plaintiffs in error, sold and de-

livered certain shares of national bank stock. The purchase was made through a broker for Samuel H. Kennedy, the defendant in error. As is usual when sales of stock are made through a broker, the plaintiffs signed the transfer of the shares on the transfer book of the bank, a blank being left to be filled with the purchaser's name. Kennedy did not fill in his name, but left the stock standing in the names of his vendors, thus exposing them to the perils of future assessments. Kennedy did more in violation of his obligation to his vendors. After the bank suspended he sold the stock; his vendee, however, was not to go on the register, but instead, by arrangement between them, Kennedy wrote over the signatures of the plaintiffs in error, upon the transfer book, the name of an irresponsible negro, thus putting *his* vendors in the false position on the books of the bank of selling to a man of straw to evade responsibility. In due time the bank passed into the hands of a receiver, who, finding Lessassier & Binder standing as registered owners, the straw transfer being disregarded, sued them for an assessment levied by the Comptroller of seventy dollars per share. This assessment they were compelled to pay, under the judgment of the U. S. Circuit Court for the Fifth Circuit and District of Louisiana, and they were condemned to pay, because their vendee, Kennedy, carried *his* stock in their names, aggravated by his writing the name of the irresponsible party over their signatures. In other words, he had effectually prepared the way to impose on his vendors the liability that should have fallen on him for assessments levied after the purchase.

It is too clear to admit of the least discussion that he owed indemnity to his vendors for these assessments. Thompson's Liability of Shareholders, sec. 217; Walker vs. Bartlette, 36th English Common Law Reports, p. 368, 2d De Gex & Smale Chancery, p. 310; Webster vs. Upton, 91 U. S., p. 71; Johnson v. Underhill, 52 N. Y., p. 203; 12th Conn., p. 530; 7th Meesum & Welby, p. 517.

Accordingly, Lessassier & Binder sued Kennedy in the Civil District Court for the Parish of Orleans for the amount of this assessment, which they paid under the judgment of the U. S. Circuit Court. The case necessarily involved the question whether Lessassier & Binder under the national banking act were bound for this assessment. It involved also the effect to be given to the judgment of the United States Circuit Court, which adjudged that Lessassier & Binder were liable. Both were federal questions, and the right of plaintiffs to recover depended upon them: for if under the laws of the United States relative to national banks Lessassier & Binder were liable for the assessment, as adjudged by the United States Circuit Court, then right to recover from Kennedy, their vendee, followed as the necessary consequence.

The decision of the State Supreme Court was that Lessassier & Binder were not liable for the assessment under the act; that the party to whom Kennedy sold, but who never registered, was exclusively liable, and that the federal judgment which condemned Lessassier & Binder was entirely erroneous. Hence, the conclusion of the court that Lessassier & Binder, in the erroneous view of the court, never bound for the as-

sessment, had no claim against Kennedy for the amount paid by them. This decision of the State court, that the registered owner of national bank stock cannot be held for assessments on the stock, but that the receiver must ascertain and sue the unregistered owner, the Supreme Court of Louisiana undertakes to maintain on decisions of the federal courts.

It will be observed that the decision of the State court is placed exclusively on the construction of the national banking act. It is the decision of the federal question alone that controls the decision and precludes the plaintiffs' recovery. Rec., 63.

It is to reverse that decision determining the federal question adversely to the right claimed by plaintiff in error, arising out of the laws of the United Staes and refusing to give effect to the federal judgment on which plaintiffs relied, that the plaintiffs prosecute this writ of error. It is submitted the jurisdiction of this court to reverse the decision cannot be questioned. Revised Statutes of the United States, sec. 709; Armstrong vs. Athens Cy., 16th Peters, p. 285; Ocean Co. vs. Polleys, 13th Peters' R., p. 164; National Bank vs. Matthews, 98th U. S., p. 621. Swope vs. Leffingwell, 155 U. S., p. 3; Murdock vs. Memphis, 25th Wall., p. 737; Factors' Co. v. Murphy, 111th U. S., p. 741. Dupasseur vs. Rochereau 21st Wallace, p. 130.

Referring the court to the brief on the merits, herewith filed, for a fuller appreciation of the question of jurisdiction, it is respectfully submitted the motion to dismiss should be denied.

Respectfully submitted,

HENRY C. MILLER,

Attorney for Plaintiffs in Error.

FILED.
OCT 12 1887
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

LE SASSIER AND BINDER
vs.
S. H. KENNEDY.
No. 53.

Brief for Defendant in Error.

W. HALLETT PHILLIPS,
JAMES McCONNELL,
For Defendant in Error.

R. O. POLKINHORN, PRINTER.

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Respectfully submitted,

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No. 53.

Brief for Defendant in Error.

W. HALLETT PHILLIPS,
JAMES McCONNELL,
For Defendant in Error.

R. O. POLKINHORN, PRINTER.

SUPREME COURT OF THE UNITED STATES.

LE SASSIER AND BINDER
vs.
S. H. KENNEDY.
No. 53, Oct. Term 1887.

Now comes the defendant in error by his counsel, and moves the court to dismiss the writ of error in the above entitled cause for want of jurisdiction.

W. HALLETT PHILLIPS,
For Defendant in Error.

To

Counsel for Plaintiff in Error.

Take notice that the above motion will be called up and submitted, when the case is reached on the docket in its regular order.

W. HALLETT PHILLIPS,
For Defendant in Error.

SUPREME COURT OF THE UNITED STATES.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

LE SASSIER AND BINDER
vs.
S. H. KENNEDY. } No. 53.

Brief for Defendant in Error.

It is submitted that this court is without jurisdiction, as the record fails to present a federal question. The facts are not disputed.

On the 24th of February, 1873, the defendant Kennedy purchased forty shares of the capital stock of the Crescent City National Bank of New Orleans, for fifty dollars a share. The vendors of the stock were the plaintiffs, Le Sassier and Binder, and the sale was effected through one E. C. Feinour, a broker.

The shares were delivered, and a blank transfer of the same, signed by the vendors, on the books of the bank.

On the 15th of March, 1873, Kennedy sold the stock to Thos. A. Adams for eleven dollars a share, and at his request filled up the blank transfer by inserting the name of Morris Dyer.

The purchase money was duly paid at the time by Adams, and the stock delivered.

The bank was, on the above dates, a going concern, transacting business, and the stock was being largely dealt in, although the credit of the bank had been impaired by the failure of its London correspondent. The expectation was that, in any event, the assets of the bank would exceed its liabilities.

On March 17, 1873, the bank failed, and shortly after went into the hands of a receiver.

By direction of the Comptroller of the Currency, a suit was instituted by the receiver, in the United States Circuit Court, against the stockholders, to compel them to pay an assessment of seventy per cent. of the par value on their stock. Kennedy was made a party to the bill as the owner of the forty shares. R. 63.

In his answer he denied that he was the owner, and set up the sale to Adams, and the bill, as to him, was dismissed by Mr. Justice Woods. The receiver then brought suit in the same court against Le Sassier and Binder, which was tried before Judge Billings, and recovered a judgment, which was afterwards satisfied, for $3,579.60. R. 62.

Thereupon Le Sassier and Binder brought the present action against Kennedy, in the 5th District Court for the Parish of Orleans, to hold him liable for the amount paid to the receiver.

The ground of the complaint is that the loss to the plaintiffs, as above set forth, was caused by the failure of Kennedy, on purchasing the stock, to insert his name, or that of some solvent vendee, as the transferee, on the transfer book, and that such failure had caused the receiver to pursue

them, as Morris Dyer, whose name appeared on the book as the transferee, was, at the time of the transfer, entirely irresponsible. R. 23.

The charge against Feinour the broker was that it was his duty to see that the name of Kennedy was inserted on the transfer book of the bank, and that he had neglected to perform that duty.

The Judge of the 5th District Court dismissed the suit as to Feinour, but gave judgment against Kennedy. The grounds of the judgment are thus stated:

"The effect of delivery is a complete divestiture; the consequences of acceptance is complete dominion. Complete dominion cannot exist without the burdens and perils incident to its fullest exercise. Can a person be said to have perfectly and in good faith sold to another property about which sale there is no dispute, and still be held, as to that person, to have reserved unto himself all the perils of ownership, and divested himself only of the advantages and profits of the thing sold? Would a sane person enter upon such transaction? I have been referred to several authorities on behalf of plaintiffs, and they certainly affirm the conclusion that in a contract of sale between the parties arises an indemnity – that is to say, a liability *ex-contractu* arising out and incidental to the sale. Certainly this is a most equitable doctrine, and find its confirmation in common sense and sound reasons. It is peculiarly applicable to this controversy, for the defendant in this case can invoke it against Mr. Adams, who, under a statement of the case, is clearly liable. I am aware that the cases cited were not rendered in reference to the national banking law, but we are not now dealing with that law in reference to the liability of stockholders, but rather seeking to give full effect to dealings between man and man." R. 58.

The Supreme Court of Louisiana, on appeal by Kennedy, reversed the judgment, and held that he

was not liable. The opinion was delivered by Judge Manning. The court say:

"The gravamen of the complaint is that the insertion of Dyer's name was a device of Kennedy to escape the liability which attached to him as actual owner, and that by his failure to insert his own name, he caused the receiver to pursue Le Sassier and Binder. This assumes that the transfer from Kennedy was fictitious and colorable only, and that his intent in making it was to avoid responsibility for contributions."

On this point the court say:

"His sale to Mr. Adams was not only out and out, but was not made to an irresponsible person, nor for the purpose of escaping liability. He had bought on a falling market eleven days after the disaster at London had toppled the market, and it continued to go down until he was glad to get rid of it at Mr. Adams' offer, who bought it because he had confidence that the bank would recuperate. All the insignia of fraudulent transfer are wanting. There was no collusion; the transfer was for an agreed price, which was paid, and the stock was not shuffled on to one less capable of answering calls on account of it than himself."

In answer to the point, as to the obligation of Kennedy to fill in the blank transfer with his own name, the court say:

"It is a custom to leave a blank for the name of the transferee, and it was because of this custom that the plaintiffs left the blank. This could only have been in contemplation of successive transfers, and to facilitate them, so that if the final transferee is a responsible person, and the blank is filled with his name, the object is attained of having a stock-

holder answerable for calls. Kennedy's sale was to Adams, who fulfilled all the requisites. Adams chose not to appear as transferee, but this did not relieve him from any liability which attached to him as transferee. Morris Dyer was his *alter ego*. It was through his instrumentality that a false name was inserted in the blank, and upon him rested the final undertaking to indemnify any one who might be called upon to pay." R. 83.

There was a petition for rehearing filed by the plaintiffs, and in that the nature of the controversy is thus stated:

"The case against this defendant is that the plaintiffs sold to him stock in a national bank, holding their transfer of the shares in blank; he chose not to put his own name or anybody's name but that of the negro porter's, so that when the bank failed the defendants were made liable for that loss which would have fallen on him if he had registered. What question is open to debate in this case of law or fact? The authorities all affirm that the purchaser of stock owes it to his vendor to protect him from calls on his stock made on shareholders after the vendor has sold. If the vendor, by the omission of the purchaser to register his transfer, is compelled to pay the calls, the law exacts restitution from the purchaser. The plaintiffs demand that restitution." R., 97.

From the above statement it is apparent that the question involved and decided was one of general law, and the fact that the stock sold happened to be that of a national bank did not make the question partake of a federal character. The controversy was precisely the same as if the stock sold had been that of a State bank or incorporated company.

There was not drawn in question the validity of any statute of, or authority exercised under the United States, nor was there any decision against its validity. There was no title, right, privilege or immunity claimed under any statute, or commission held, or authority exercised under the United States, nor any decision adverse thereto.

The case throughout was considered by both the courts which decided it, and by the parties, as depending upon the general law of the land, and not at all upon any thing peculiar to Federal law.

It follows that this court is without jurisdiction.

Chicago & Alton R. R. vs. *Wiggins Ferry Co.*, 119 U. S., 624;

Williams vs. *Weaver*, 100 U. S., 547.

In the petition of plaintiffs for the writ of error to this court it is stated that there was drawn in question the authority of the receiver of the bank to sue for and recover from the plaintiffs the said assessment, which the plaintiffs relied upon as conferring their right of action against defendant, and that the judgment of the court maintained that the receiver had no authority and that the plaintiffs were not bound for said assessments, hence had no basis to demand from the defendant the re-imbursement claimed in this suit. R. 99.

Neither the judgment of the Supreme Court of Louisiana nor its decision substantiate this statement. The question as here stated by plaintiff in error was not in fact decided, nor was its decision necessary. The controversy was not as to the liability of stockholders of national banks, but simply whether there was any valid claim of indemnity established by the

plaintiff in the present action against the *defendant*. It might well have been that Adams, the vendee of the defendant, could have been held liable by the receiver had he preferred to sue him instead of suing the present plaintiffs. Adams was the actual owner of the stock at the time of the failure, while the plaintiffs appeared on the books as the only responsible owners.

But had the court below actually decided that the plaintiffs ought not to have been compelled to pay the assessment, it would be very questionable indeed whether such a decision would have drawn in question the validity of an authority exercised under the United States, and would have been a decision adverse to such authority. It would have been merely the expression of an opinion that some person other than the present plaintiffs ought to have been cast by the judgment; it would not have affected the real question in this case, which is whether the defendant, Kennedy, is the person to indemnify the plaintiffs for the loss which they actually suffered by that judgment, whether it was right or wrong.

The present action was not brought to enforce the Federal judgment, nor is it pretended that such judgment in any way declares a liability on the part of defendant.

Should the court decide to entertain jurisdiction, they will find the merits of the case displayed in the extracts from the decision of the State Supreme Court already given. That decision we submit was manifestly correct.

We need not stop to consider the general question of the liability of a purchaser of stock to indem-

nify a vendor for calls he had been obliged to pay after he had sold the stock.

Whatever may be the rule, it cannot affect the disposition of the case at bar.

It is not disputed that Kennedy had the right to sell the stock after he had purchased it from the plaintiffs, provided the sale was a *bona fide* one to a solvent vendee, nor is it denied that the vendee of the stock could have been made liable for calls if he was the actual owner at the time of the failure, although his name did not appear on the register of shareholders.

The real complaint in the present case is not on account of the failure of Kennedy to insert his *own name* in the blank transfer of the stock made by the plaintiffs, but arises from the fact that the blank transfer was not filled by the name of *any* solvent purchaser, and consequently the plaintiffs were held liable to answer for calls.

The plaintiffs would have been satisfied had the name of Adams, the purchaser from Kennedy, appeared as the transferee. Adams was at the time the President of a leading insurance company, and as responsible as Kennedy.

If there was no need of Kennedy inserting his own name on the books—if the name of Adams could as well have been inserted—does not that concession dispose of the plaintiffs' case? What difference does it make that Adams directed the name of Dyer to appear as the transferee instead of his own name? That did not affect his liability as the real owner of the stock; Dyer was but his *alter ego*. The effect was the same as it would have been had he failed to have had any name appear, and had taken and con-

tinued to hold the stock as Kennedy had taken it, with the blank transfer signed by the plaintiffs.

When Judge Woods discharged Kennedy in the suit brought by the receiver to hold him as a stockholder at the time of the failure, the question at issue in the present case, was practically settled.

In his answer to that suit, which is in evidence (R., 72), Kennedy denies that he was the holder or owner of the stock in the bank, as alleged in the bill of complaint, and sets up the sale of the stock to Adams, and the receipt of the purchase money; he refers to his answer to the interrogatories contained in the bill, in which he states the particulars of the transaction. This statement is, in all respects, the same as that made in the present suit.

In his answer to the interrogatories, after stating that the amount he had received from Adams for the sale of the stock was $440, and that there was no other consideration for the sale, he says:

"I had no idea that the Crescent City National Bank was or would be insolvent. I learned that its affairs in London were not resulting as favorably as was at first supposed, and its stock was therefore less valuable. I purchased the forty shares, thinking the first depression put it down too low, and that it would rally, and I could sell it out at a profit. I was offered forty-nine dollars a share and refused to sell. Later I was offered forty dollars, then twenty dollars, and again sixteen dollars, but refused to sell; but becoming, as it were, disgusted with my investment, I determined to sell at the best price I could get, and sold the shares at eleven dollars to Mr. Adams." R., 6, 7.

This defense, of the sale to Adams, was sustained by Judge Woods, and the bill, as to Kennedy, was dismissed. R. 78.

It has been suggested that the judge might have proceeded upon the ground that Kennedy had never appeared on the bank books as the transferee. This would be to impute to the learned judge a ground of decision opposed to the settled authorities on the subject, and opposed to the law as acknowledged by our opponents. Their contention in the court below was not that an unregistered owner was exempt from liability to answer calls, but that the receiver of the defunct corporation was not *obliged* to follow the owner of the stock whose name did not appear on the books, but was at liberty to follow the list of registered share-holders.

Their proposition is thus stated:

"It is said the receiver can sue the owner, whether registered or not. *He can if he pleases.* 17 Blatch., 262. The question is, whether he cannot sue the share-holder who has never caused any transfer from him to be registered, or who figures on the books as the transferor to a wholly irresponsible party; that was the predicament of Le Sassier and Binder." R. 89.

It is clear, therefore, that Judge Woods discharged Kennedy on the sole ground, set up in his answer, that he was not the owner of the stock at the time of the failure, having parted with it by a *bona fide* sale to Adams. He could not have exempted him from liability, because the receiver *might* have sued Le Sassier and Binder, who appeared on the stock list as the responsible registered owners.

The sale to Adams having been declared a valid one, any responsibility resulting from the ownership of the stock, whether to creditors or to former owners, was assumed by him.

We do not, however, rest the *bona fides* of the sale to Adams upon the decree of Justice Woods, or the decision of the Supreme Court of the State. The evidence in the present suit, establishing its entire good faith is complete and uncontradicted. R. 48, 56.

We ask for an affirmance of the judgment, if the case is not dismissed for want of jurisdiction.

W. HALLETT PHILLIPS,
JAMES McCONNELL,
For Defendant in Error.